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CIVIL DOCKET

UNITED STATES DISTRICT COURT

Civil Action No. 2072-N

ARLAM CARR, JR., a minor, by ARLAM CARR and JOHNNNIE CARR, his parents and next friends; CHARLES LEE BELL, a minor, by CHARLIE BELL and EMMA M. BELL, his parents and next friends; WILLIAM H. DAY, a minor, by HELEN B. DAY, his mother and next friend; JOSEPHINE MARTIN, a minor, by NETTIE MARTIN, her mother and next friend; JOAN MASTIN, a minor, by FRANK MASTIN and PEARLINE MASTIN, her parents and next friends; CONSTANCE SMITH, a minor, by JOHNNIE SMITH and BERTHA SMITH, her parents and next friends; and MAE CAROLYN THOMAS, a minor, by LEE C. THOMAS and SOPHIA L. THOMAS, her parents and next friends,

Plaintiffs,

UNITED STATES OF AMERICA,

Amicus Curiae,

VS.

MONTGOMERY COUNTY BOARD OF EDUCATION: JAMES W. RUTLAND, JR., FRED BEAR, GEORGE C. STARKE, GEORGE A. DOZIER, DR. EDWARD J. WALKER, ISABELLE B. THOMASSON and DR. ROBERT PARKER, Members of the Montgomery County Board of Education; and WALTER MCKEE, Superintendent of Education of Montgomery County, Alabama,

Defendants.

For plaintiff:

Fred D. Gray
352 Dexter Ave.
Montgomery, Ala. 36104

Jack Greenberg
Charles H. Jones, Jr.
10 Columbus Circle
New York, N.Y. 10019

Stephen J. Pollak, Asst. Atty. Gen. of U.S. for Civil Rights, Washington, D.C. and Ben Hardeman, U.S. Attorney, P.O. Box 197, Montgomery, Ala., for amicus

For defendant:

Vaughan Hill Robison for
Montgomery County Board of Education
P.O. Box 901
Montgomery, Alabama 36102

Also: Joseph D. Phelps (same address)

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DATE	PROCEEDINGS
5/11/64	Complaint filed and summons issued.
5/11/64	Motion for preliminary injunction.
5/12/64	Marshal's return on summons and complaint—Executed 5/11/64 by personal service on Dr. Robert Parker, Dr. W. E. Goodwin, Mr. Fred Bear; further executed 5/12/64 by serving the Montgomery County Board of Education by leaving a copy with Walter McKee, Supt. Montgomery County Board of Education;

DATE	PROCEEDINGS
	further by personal service on Isabelle B. Thomasson, Walter McKee, Harold M. Harris and George A. Dozier; further service on Dr. H. P. Dawson was had by leaving a copy with Mr. H. P. Dawson, at their residence.
5/18/64	Order appointing as amicus curiae Ben Hardeman, U. S. Attorney, and John Doar, Attorney, Civil Rights Division, Department of Justice, Washington, D. C., and/or any other attorney with the Department of Justice designated by the Honorable Robert Kennedy, Attorney General of the United States.
5/26/64	Interrogatories propounded by the defendant Montgomery County Board of Education to Plaintiff Arlam Carr, Jr., a minor, by Arlam Carr and Johnnie Carr, his parents and next friends.
5/26/64	Interrogatories propounded by the defendant Montgomery County Board of Education to plaintiff Bathsheba L. Thompson, a minor, by Bishop S. Thompson, Sr., and Lois E. Thompson, her parents and next friends.
5/26/64	Interrogatories propounded by the defendant Montgomery County Board of Education to John W. Thompson, a minor, by Bishop S. Thompson, Sr., and Lois E. Thompson, his parents and next friends.
5/26/64	Interrogatories propounded by the defendant Montgomery County Board of Education to

DATE	PROCEEDINGS
	plaintiff James G. Thompson, by Bishop S. Thompson, Sr., and Lois E. Thompson, his parents and next friends.
5/26/64	Interrogatories propounded by the defendant Montgomery County Board of Education to plaintiff Phillip L. Thompson, a minor, by Bishop S. Thompson, Sr., and Lois E. Thompson, his parents and next friends.
5/30/64	Defendants' motion to dismiss complaint and the motion for preliminary injunction.
6/3/64	Plaintiffs' notice of the taking of the deposition of Walter McKee, Superintendent of Schools of Montgomery County, Alabama, at 9:00 a.m. June 9, 1964.
6/5/64	Motion of Defendant Walter McKee that deposition, as scheduled by plaintiffs, be stayed and continued until a date set and determined by the Court subsequent to June 10, 1964.
6/5/64	Order denying motion of defendant Walter McKee seeking to have the Court stay the taking of his deposition by attorneys for the plaintiffs from the schedules date of June 9, 1964.
6/10/64	Answers of Plaintiff Arlam Carr to Interrogatories propounded by Defendant Montgomery County Board of Education.
6/10/64	Answers of Plaintiff James G. Thompson to Interrogatories propounded by Defendant, Montgomery County Board of Education.

DATE	PROCEEDINGS
6/10/64	Answers of Plaintiff John W. Thompson to Interrogatories propounded by Defendant, Montgomery County Board of Education.
6/10/64	Answers of Plaintiff Phillip L. Thompson to Interrogatories propounded by Defendant, Montgomery County Board of Education.
6/10/64	Answers of Plaintiff Bathsheba L. Thompson to Interrogatories propounded by Defendant, Montgomery County Board of Education.
6/20/64	Deposition of Mr. Walter McKee.*
6/25/64	Plaintiffs' Opposition to Defendants' Motion to dismiss.
6/30/64	Order denying defendants' motion to dismiss; further ORDER setting hearing on plaintiffs' motion for a preliminary injunction commencing at 9:30 a.m., July 29, 1964.
7/8/64	Defendants' answer to complaint.
7/9/64	Plaintiffs' request for admissions under Rule 36.
7/9/64	Plaintiffs' motion for production of documents for inspection and copying.
7/16/64	ORDER directing production of documents for inspection and copying.
7/17/64	Plaintiffs' motion for leave to file amendment to complaint.

* Being retained in District Court pending receipt of instructions for forwarding depositions, etc.

DATE	PROCEEDINGS
7/17/64	ORDER granting plaintiffs' motion to file amendment to complaint.
7/17/64	Amendment to complaint filed (substitution of parties plaintiff). Acceptance of service of motion and amendment by Vaughan Hill Robison, of counsel for defendants.
7/17/64	Defendants' answer to plaintiffs' request for admissions.
7/31/64	Memorandum opinion.
7/31/64	Decree. Defendants enjoined from operating segregated public schools in Montgomery County, Alabama, except in strict accordance with this Court's opinions and decrees; from failing to provide public education for plaintiffs and other members of their race on non-segregated basis; failing to make immediate start, commencing with first, tenth, eleventh, and twelfth grades for school year 1964-65, and failing to take such additional steps in elimination of racial discrimination for the 1965-66 school year as may be required by any desegregation plan approved by this Court. Defendants ordered to begin accepting applications for assignment or transfer from applicants to attend schools heretofore attended by a race other than their own, to report to this Court by 9 a.m. on Sept. 1, 1964, as to action taken on these applications, to publish

DATE	PROCEEDINGS
	for twice each week for the weeks beginning Aug. 2 and 9, 1964, a notice that applications will be accepted through August 14, 1964, and to file with this Court on or before January 15, 1965, their detailed plan for operation of Montgomery County school system commencing with 1965-66 school year. Jurisdiction of cause retained.
7/31/64	Writ of injunction in accordance with memorandum opinion and decree issued.
8/3/64	Marshal's returns on memorandum opinion, decree, and writ of injunction. Service on Montgomery County Board of Education by handing to and leaving copies with Walter McKee on 8/3/64. Personal service on Dr. Harris P. Dawson, George A. Dozier, Dr. W. E. Goodwin, Dr. Robert Parker, Harold M. Harris, and Walter McKee on 8/3/64. Mrs. Isabelle Thomasson not served because she is out of district.
8/4/64	Marshal's further return on memorandum opinion, decree, and writ of injunction. Personal service on Fred Bear on 8/3/64.
8/12/64	Marshal's further return on memorandum opinion, decree, and writ of injunction. Personal service on Mrs. Isabelle B. Thomasson on 8/10/64.
9/ 1/64	Defendants' report, in accordance with Court order of 7/31/64, on applications for transfer and/or assignment pursuant to said order.

DATE	PROCEEDINGS
9/ 1/64	Plaintiffs' motion for further relief or order to show cause.
9/ 1/64	ORDER that defts. report by 3 p.m. 9/1/64 on reasons for rejecting applications.
9/ 1/64	Defendants' additional report on applications for transfer and/or assignment in response to plaintiffs' motion and Court order of 9/1/64.
9/ 1/64	Plaintiffs' amendment to motion for further relief.
9/ 5/64	Order approving and accepting the action taken by the Montgomery County Board of Education in granting the applications of 8 of the 29 Negro children who applied for transfer and/or assignment to schools previously attended by pupils of the white race.
12/12/64	Costs bill in amount of $274.04 received from plaintiffs' attorney. Costs to be taxed 12/22/64.
12/22/64	Costs taxed.
1/11/65	Suggestion of amicus curiae, the United States, for substitution of James W. Rutland, Jr., George C. Starke, and Dr. Edward J. Walker as parties defendant for Harold M. Harris, Dr. H. P. Dawson, and Dr. W. E. Goodwin.
1/11/65	ORDER substituting James W. Rutland, Jr., George C. Starke, and Dr. Edward J. Walker as parties defendant for Harold M. Harris, Dr. H. P. Dawson, and Dr. W. E. Goodwin.

DATE	PROCEEDINGS
	Clerk ordered to serve copies of memorandum opinion, decree, and writ of injunction filed 7/31/64 on the new parties by registered mail.
1/15/65	Plan of Montgomery County Board of Education for desegregating entire Montgomery County School System.
1/18/65	ORDER that any objections to proposed desegregation plan filed 1/15/65 be made in writing and filed on or before 2/16/65.
2/15/65	Motion of U.S., amicus curiae, for extension of time to 2/25/65 within which to file objections to defendants' desegregation plan and ORDER granting.
2/16/65	Plaintiffs' motion for extension of time within which to file objections to defendants' desegregation plan.
2/16/65	ORDER extending time for plaintiffs to file objections to plan to February 25, 1965.
2/23/65	Plaintiffs' objections to defendants' desegregation plan.
2/25/65	Objections of United States, as amicus curiae, to defendants' desegregation plan.
3/29/65	Plaintiffs' notice of taking the deposition of Walter McKee.
3/29/65	Defendants' motion for postponement of hearing on objections to desegregation plan and for stay of taking of deposition of Walter McKee.

DATE	PROCEEDINGS
3/30/65	ORDER that taking of deposition of Walter McKee be stayed until April 15, 1965, and that hearing upon objections to desegregation plan be continued until 10 a.m. on April 28, 1965.
4/21/65	Deposition of Walter McKee.*
4/24/65	Plaintiffs' amendment to objections to desegregation plan.
4/28/65	ORDER continuing hearing upon objections to proposed desegregation plan to 5/5/65 at 10 a.m.
5/ 6/65	Court reporter's transcript of proceedings at hearing upon objections to proposed desegregation plan on 5/5/65.

IN VOL. III AT PAGE 442.

5/18/65	ORDER that plan of desegregation be approved with following modifications: Grade 7 (in addition to grades 1, 2, 9, 10, 11, and 12) to be desegregated with school term commencing Sept. 1965; applications for transfer or assignment to these grades must be filed 7/20/65 on forms obtainable from office of Supt. of Education, said forms to be available between 6/21 and 7/20/65; that Supt. of Education direct principals to enclose in envelope with each child's report card for school term 1964-65 a notice as set out in the order; that notice also be published on June 13, 20, and 27 in a

* Being retained in District Court pending receipt of instructions for forwarding depositions, etc.

DATE	PROCEEDINGS
	newspaper of general circulation in Montgomery County; that Supt. of Education notify parents in writing on or before 8/17/65 of action taken upon applications for transfer or assignment; that Board of Education file on or before 1/14/66 its detailed plan for operation of Montgomery County Public School System commencing with 1966-67 school year. Jurisdiction of this cause specifically retained.
8/ 9/65	Defendants' report as to the action taken by the Montgomery County Board of Education for transfers, etc. filed pursuant to the Order of 5/18/65.
8/16/65	ORDER that objections, if any, to action taken by Montgomery County Board of Education be filed on or before 8/24/65. Hearing upon such objections set for 2 p.m. on 8/26/65.
8/19/65	Plaintiffs' notice of taking the deposition of Walter McKee.
8/24/65	Plaintiffs' objections to defendants' rejection of applications for transfer.
8/24/65	Objections of United States to defendants' rejection of applications for transfer.
8/27/65	ORDER overruling objections of plaintiffs and the U.S. to action of Board of Education in denying certain applications for transfer but sustaining objections as to certain other applications. Board ordered to grant applications for

DATE	PROCEEDINGS
	transfer of six named applicants. Objection and request on part of plaintiffs based on contention that the defendants have acted in bad faith to the point that the Alabama Pupil Placement Law should be declared unconstitutional denied. Action of defendants as set out in report of 8/9/65 in all other respects affirmed.
9/15/65	Court reporter's memorandum transcript to identify plaintiffs' exhibits 4, 5, and 6 at hearing on 8/26/65. Exhibits attached.
1/14/66	Montgomery County School Board's plan for desegregation of public schools.
1/19/66	ORDER that objections, if any, to Board's plan be filed on or before 2/18/66. (Copies of order mailed to Gray & Seay, Jack Greenberg, et al., Ben Hardeman, John Doar, Hill, Robison & Belser.)
2/18/66	Amicus Curiae's objections to desegregation plan.
2/18/66	ORDER consolidating this case with 2073-N for purpose of hearing objections to desegregation plans submitted. Hearing set for 9 a.m. on 3/11/66. (Copies mailed to counsel.)
2/18/66	Plaintiffs' objections to desegregation plan.
3/11/66	Court reporter's transcript of remarks read into record by Court at conclusion of hearing on 3/11/66.

DATE	PROCEEDINGS
3/22/66	ORDER that defendants execute the plan for desegregation attached to this order and incorporated therein; that they report to Court on or before June 7, and each such date until further order, the anticipated student enrollment in each school by race and grade for next school year; that they report by June 15, and each such date until further order, the planned assignments of professional staff to each school for next school year by race and grade; that they report no later than September 20, and each such date until further order, the actual data for the student enrollment and professional assignment. Court specifically retains jurisdiction of parties and cause. (Copies mailed to counsel and delivered to Marshal for service on defendants.)
3/25/66	Marshal's returns on service of order of 3/22/66. Service on Montgomery County Board of Education by serving Walter T. McKee, Superintendent, on 3/22/66; personal service on Walter T. McKee, Superintendent, Montgomery County Board of Education, on 3/22/66; personal service on George A. Dozier, Mrs. Isabelle Thomasson, Fred Bear, and Edward J. Walker on 3/23/66; personal service on James W. Rutland on 3/24/66; personal service on George C. Starke and Dr. Robert Parker on 3/25/66.
5/13/66	Costs in amount of $239.16 taxed per costs bill received from plaintiffs.

DATE	PROCEEDINGS
6/ 7/66	Defendants' report in accordance with order of 3/22/66. (In brown envelope)
6/15/66	Report of Board of Education in compliance with order of Court of March 22, 1966. (In brown envelope)
8/18/66	ORDER amending order of March 22, 1966. Montgomery County Board of Education allowed until school year 1967-68 to commence desegregation of faculty and professional staff. Board ordered to report to Court by June 15, 1967, planned assignments of faculty and professional staff. (Copies mailed to counsel.)
9/12/66	Plaintiffs' motion to have Court admit Willie Robert Bell to Lanier High School.
9/13/66	ORDER setting for hearing Plaintiffs' motion seeking order directing defendants to admit Willie Robert Bell as student to Sidney Lanier High School, on Wednesday, Sept. 14, 1966, at 2:00 p.m. (Copies mailed to counsel)
9/14/66	Defendants' answer to petition filed on 9/12/66 by attorneys for plaintiffs.
9/14/66	ORDER continuing petition for admission of Willie Robert Bell to Lanier High School until further order. (Copies mailed to counsel.)
9/20/66	Defendants' report, in accordance with order of 3/22/66, on student enrollment and professional assignments. (In brown envelope)

DATE	PROCEEDINGS
10/ 3/66	Plaintiffs' motion to dismiss the petition of Willie Robert Bell.
10/ 5/66	ORDER, upon plaintiffs' motion and without any objection by defendants, dismissing petition of Willie Robert Bell. (Copies mailed to counsel.)

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4/11/67	Plaintiffs' motion for further relief.
4/28/67	ORDER requiring defendants to show cause at 9 a.m. on May 25, 1967, why they should not be required to adopt desegregation plans for the Montgomery County school system that comply with the standards embodied in U.S. and Linda Stout, et al. v. Jefferson County Board of Education, et al., and in Exhibit "A" to this Court's decree of March 22, 1967, in Lee, et al. v. Macon County Board of Education, et al., Civil Action No. 604-E, and why they should not be required to put such plans into effect commencing with the 1967-68 school year. U.S., as amicus curiae, ordered to appear and participate in said proceedings. Clerk ordered to attach to this order copies of the opinion and decree entered March 22, 1967, in CA No. 604-E.
4/28/67	Copies of show cause order of 4/28/67, with attachments as ordered, mailed to counsel; copy delivered to U.S. Marshal for service on Walter McKee, Superintendent of Education of Montgomery County; copies mailed by cer-

DATE	PROCEEDINGS
	tified mail, return receipt requested, to the members of the Montgomery County Board of Education.
5/ 2/67	Marshal's return on service of show cause order of 4/28/67 with its attachments. Personal service on Walter McKee, Superintendent of Education of Montgomery County, on 5/1/67.
6/ 1/67	ORDER that the defendants adopt and implement the plan for desegregation of the public school system of Montgomery County attached to this order. Copies mailed to counsel; copies delivered to Marshal for service on defendants.
6/ 5/67	Marshal's returns on service of order of 6/1/67. Service on Board of Education and Superintendent of Education on 6/1/67; service on members of the Board on 6/2/67. (Dr. Franklin Jackson served in place of George A. Dozier.)
6/ 7/67	Defendants' report, in accordance with order of 6/1/67, on choice period.
6/15/67	Defendants' report, in accordance with order of 6/1/67, on faculty desegregation. REPORTS OF 6/7/67 and 6/15/67 in brown envelope.
8/17/67	Notice of motion and motion of U.S. for further relief.
8/30/67	Plaintiffs' joinder in motion of U.S. for further relief.

DATE	PROCEEDINGS
9/ 1/67	Defendants' answer to motion of U.S. for further relief.
1/30/68	Notice of U.S. of taking discovery deposition of Walter T. McKee, Superintendent of Education for Montgomery County.
2/ 1/68	Further answer of Montgomery County Board of Education to motion of U.S., filed 8/17/67, for further relief.
2/ 2/68	Deposition of Walter T. McKee.*
2/ 7/68	Notice of motion and motion of U.S. for further relief.
2/9/68	Plaintiffs' joinder in motion of U.S. for further relief, and motion for still further relief.
2/17/68	Stipulation of parties concerning persons available for substitute teaching in Montgomery public schools.
2/24/68	Memorandum opinion (and order). Defendants ordered to adopt and implement the attached supplement to the desegregation plan ordered in this case on June 1, 1967. (The supplement calls for two full-time teachers of the opposite race at every school with fewer than 12 teachers and at schools with 12 or more teachers at least one faculty member of the opposite race to six of the majority race at that school; for desegregation of the substi-

* Being retained in District Court pending receipt of instructions for forwarding exhibits and depositions.

DATE PROCEEDINGS

tute teacher rolls, student teachers, and the faculties of night schools. School board to obtain approval from State Supt. of Education for all proposed construction of new or expanded facilities; the State Superintendent, upon receipt of such proposals to take appropriate action in accordance with decree of 3/22/67 in Lee v. Macon, CA No. 604-E. School board to adopt nondiscriminatory bus routes. School board to take affirmative action, as set out in the opinion, to eradicate the effect of the efforts it and its employees have made to create the impression throughout the school system that Jefferson Davis High School, Peter Crump Elementary School and Southlawn Elementary School are to be used primarily by white students. Transportation to be provided to Jefferson Davis High School, Peter Crump Elementary School, and Southlawn Elementary School; transportation to Jefferson Davis to be provided to each student who chooses it and who lives outside the City of Montgomery, and more than two miles from the school, and who lives nearer Jefferson Davis than either Lee or Lanier in the absence of compelling circumstances approved by the Court. Choice of each Negro who chooses Jefferson Davis during the 1968-69 school year to be honored in the absence of compelling circumstances approved by the Court. Board to report to Court every three

DATE	PROCEEDINGS
	months, beginning March 15, 1968, on the steps taken to comply with desegregation plan ordered into effect June 1, 1967, and this supplement.) Copies mailed to counsel.
2/24/68	Writ of injunction issued to defendants in accordance with memorandum opinion and delivered to Marshal, with copies of opinion, for service on defendants.
2/26/68	Marshal's returns on service of writ of injunction and memorandum opinion. Personal service on Walter McKee, Superintendent of Education for Montgomery County, and on Fred C. Bear, Dr. J. Edward Walker, James W. Rutland, Jr., and Mrs. Isabelle Thomasson, Members of Montgomery County Board of Education, on 2/24/68. Service on Montgomery County Board of Education on 2/24/68 by service on Walter McKee; service on Dr. Robert Parker and Dr. Franklin Jackson, member of said Board, on 2/24/68 by leaving copies with their wives at their residences.
2/27/68	Defendants' notice of appeal to U.S. Court of Appeals for Fifth Circuit. (Copies of notice mailed by Clerk to Gray, Seay, Langford & Pryor, Jack Greenberg and Charles H. Jones, Jr., Hon. Stephen Pollak, Asst. Atty. Gen., Civil Rights Div., U.S. Dept. of Justice, and Ben Hardeman, U.S. Atty.)
2/27/68	Court reporter's excerpt transcript—testimony of Herman L. Scott at hearing on 2/9/68.

DATE PROCEEDINGS

IN VOL. III AT PAGE 670

2/28/68 Defendants' bond for costs on appeal. ($250 deposited in registry fund.)

2/28/68 Defendants' motion for suspension and stay of injunction and order during pendency of appeal.

3/2/68 ORDER amending order and injunction of February 24, 1968. That portion of Part IV, C providing that the school board will provide transportation to Jefferson Davis High School for students who live more than two miles from the school and outside the City and closer to this school than Lee or Lanier amended to provide such transportation if said students live closer to Jefferson Davis than to Lee, Lanier or Montgomery County High School. Effective date of Part I, D (relating to ratio of days taught by white substitute teachers to number of days taught by Negro substitute teachers) changed from March 1, 1968, to September, 1968; effective date of Part I, E (relating to ratio of number of days taught by white student teachers to number of days taught by Negro student teachers) changed from March 1, 1968, to September, 1968. Attachment A (letter to students) informing students that they are eligible to attend Jefferson Davis High School if they choose to do so amended to inform students that they are eligible to *choose* to attend Jefferson Davis High School if they

DATE	PROCEEDINGS
	desire to do so. That portion of Part I, B providing that every school with fewer than 12 teachers will have two full-time teachers whose race is different from the race of the majority of faculty and staff amended to provide that such schools will have at least one full-time teacher whose race is different from the race of the majority of faculty and staff. (Copies mailed to counsel; copies mailed by certified mail, return receipt requested, to defendants and State Superintendent of Education.)
3/2/68	ORDER that effective date for complying with, and making plans to comply with, those provisions of the injunction of Feb. 24, 1968, set out in Part I, B (faculty desegregation); Part IV, C (transportation to Jefferson Davis High School, Peter Crump Elementary School and Southlawn Elementary School), and Part IV, D (the honoring of choices of Negro students who choose to attend Jefferson Davis High School during 1968-69 school year) be stayed until August 1, 1968. (Copies mailed to counsel; copies mailed by certified mail, return receipt requested, to defendants and State Superintendent of Education.)
3/6/68	Defendants' motion for leave to amend notice of appeal.
3/6/68	ORDER granting defendants' motion for leave to amend notice of appeal.

DATE PROCEEDINGS

3/6/68 Amended notice of appeal filed by defendants. (Copies of amended notice, motion and order mailed to Gray, Seay, Langford & Pryor; Jack Greenberg, et al., Hon. Stephen Pollak, Hon. Ben Hardeman, and U.S. Dept. of Justice Attorneys, Selma, Ala.)

3/6/68 Appellants' statement of points.

VOLUME III—RECORD PAGES 442-698 (Transcript filed 5/6/65 appears at page 442)

3/6/68 Court reporter's memorandum transcript of comments at conclusion of hearing on May 25, 1967.

3/6/68 Court reporter's transcript of hearing September 5, 1967.

3/11/68 Court reporter's transcript of hearing February 9, 1968.

3/11/68 Clerk's certificate as to record. (Not included —updated March 20, 1968)

3/11/68 Record mailed by certified air mail to Clerk, U.S. Court of Appeals, Room 536-A, Old Post Office Building, Atlanta, Ga. 30301.

3/13/68 ORDER (entered by CCA on 3/12/68) of Court of Appeals granting joint motion of parties for expedited hearing and submission of appeal on original record and typewritten briefs provided 2 extra xeroxed copies of the original record are prepared after record has been appropriately indexed, numbered and certi-

DATE	PROCEEDINGS
	fied by Clerk of District Court. Appellants' xeroxed brief to be filed and served on all opposing parties by April 5 and appellees' brief to be filed no later than April 25.
3/18/68	Defendants' report in accordance with Part V of desegregation plan attached to memorandum opinion of Feb. 24, 1968. (In brown envelope.)
3/20/68	Clerk's certificate as to record.

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Complaint

(Filed May 11, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

The jurisdiction of this court is invoked pursuant to the provisions of Title 28, United States Code, Section 1343(3), this being a suit in equity, authorized by law (Title 42, United States Code, Section 1983) to be commenced by any citizen of the United States or other person within the jurisdiction thereof to redress the deprivation, under color of statute, ordinance, regulation, custom or usage of a state, of rights, privileges and immunities secured by the Constitution and laws of the United States. The rights, privileges and immunities sought to be secured by this action are rights, privileges and immunities secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, as hereinafter more fully appears.

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II

This is a proceeding for a preliminary and permanent injunction enjoining the Montgomery County Board of Education, its members and the Superintendent of Education, Walter McKee, from continuing their policy, practice, custom and usage of operating a dual school system in Montgomery County, Alabama, based wholly on the

race and color of children attending schools in said county. This is also a proceeding to enjoin said defendants from assigning students, teachers and other school personnel to the schools operated and controlled by them on the basis of race, and to enjoin the use of any funds or property in such manner as to perpetuate a compulsory biracial school system in Montgomery County.

III

The plaintiffs in this case are Arlam Carr, Jr., a minor by Arlam Carr and Johnnie Carr his parents and next friends; and Bathsheba L. Thompson, John W. Thompson, James G. Thompson, and Phillip L. Thompson, minors, by Bishop S. Thompson, Sr. and Lois E. Thompson, their parents and next friends. Plaintiffs bring this action as a class suit pursuant to Rule 23(a)(3) of the Federal Rules of Civil Procedure on behalf of themselves and on behalf of other Negro children and their parents similarly situated, all of whom are affected by the policy, practice, custom and usage complained of herein as will more fully appear. The members of the class on behalf of which plaintiffs sue are so numerous as to make it impracticable to bring them all individually before this Court, but there are common questions of law and fact involved; common grievances arising out of common wrongs and common relief is sought for each of the plaintiffs individually and for each member of the class. Plaintiffs fairly and adequately represent the interest of the class.

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IV

Infant and adult plaintiffs are Negro citizens of the United States and of the State of Alabama and are

presently residing in Montgomery County, Alabama. The minor plaintiffs are either attending public schools in Montgomery County, Alabama, managed, controlled and operated by defendants herein or are eligible to attend such schools. The schools which minor plaintiffs currently attend are all limited by defendants to attendance by Negro children pursuant to the policy, practice, custom and usage of defendants of operating a compulsory biracial school system and assigning school children therein and other personnel on the grounds of race.

V

Defendants are the Montgomery County Board of Education, Harold M. Harris, Fred Bear, Dr. H. P. Dawson, George A. Dozier, Dr. W. E. Goodwin, Mrs. Isabelle B. Thomasson and Dr. Robert Parker, members of the Montgomery County Board of Education, and Walter McKee, Superintendent of Education of Montgomery County, Alabama. The defendant Board is charged by the laws of the State of Alabama with the duty of operating a system of free public schools in Montgomery County and said Board is presently operating the public schools in the aforesaid county pursuant to those laws. Defendant, Walter McKee, as the Superintendent of Schools for Montgomery County, is the chief administrative officer of the Board. Defendants are sued in their individual as well as in their official capacity.

VI

Defendants, acting under color of the laws of Alabama, have pursued for some time and are presently pursuing a policy, practice, custom and usage of operating the pub-

lic school system in Montgomery County, Alabama on a racially segregated basis. Defendants maintain and operate a compulsory biracial school system by the use of

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dual school zone or attendance areas for white and Negro pupils. Using the dual attendance areas, defendants make initial assignments of students to the public schools under their control on the grounds of race and color. Principals, teachers and other professional personnel under defendants' jurisdiction are likewise assigned to the schools on the basis of race and color. Students initially assigned to elementary schools designated as "white" are thereafter assigned solely to high schools similarly designated. Students assigned initially to elementary schools denominated as Negro, are thereafter assigned solely to high schools similarly designated. In no case are the assignments of either students, teachers, principals or other professional personnel of the white race made to schools designated as Negro nor are assignments of students, teachers, principals or other personnel of the Negro race assigned to schools designated as white. Defendants also discriminate against plaintiffs herein and the members of the class represented by them in school construction, the formulation of budgets, and the disbursement of school funds. Specifically, defendants construct elementary and high schools with reference to the maintenance of a compulsory biracial school system. Defendants herein also limit the participation in extra-curricular activities in the schools to one or the other race, separately.

VII

On or about April 22, 1964, Mr. Fred D. Gray, an attorney acting on behalf of the plaintiffs herein, wrote to

defendant Walter McKee and the defendant Board members, requesting a change of the policy, practice, custom and usage of operating a compulsory biracial school system, and petitioned said defendants to refrain from continuing the acts complained of therein (a copy of this petition is attached hereto, marked Ex. A, and made a part of this complaint). The plaintiffs, in essence requested, and seek herein, the complete reorganization of the Montgomery County school system on a nonracial basis.

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VIII

Although the defendant Board was duly placed on notice that plaintiffs and members of their class wished to have the Montgomery County public schools desegregated in accordance with the Supreme Court's school desegregation decision of 1954, and although they made specific demands upon said Board, as contained in the aforementioned petition (see Ex. A), to the date of the filing of this complaint, none of the plaintiffs, nor anyone acting on their behalf, have received any response with regard to the foregoing from any of the defendants herein.

IX

The plaintiffs herein have not exhausted the administrative remedy provided by the Alabama School Placement Law for the reason that the remedy there provided is inadequate to provide the relief sought by them in this case. By numerous past decisions in this Circuit, plaintiffs are not required to exhaust administrative remedies which will afford them no relief. Plaintiffs have not exhausted the remedies provided by the Alabama School Placement Law

for the further reason that the defendants, acting pursuant to the terms of that law, have continued to maintain and operate a compulsory biracial school system. The Alabama School Placement Law was passed by the Alabama Legislature in 1955 (Code of Alabama), Title 52, §§ 61(1)—61 (12). Though the Alabama School Placement Law was held to be constitutional on its face in *Shuttlesworth* v. *Birmingham Board of Education,* 162 F. Supp. 372, affirmed 358 U.S. 101, the school placement law has been administered and applied to plaintiffs in such a way as to discriminate against them with respect to their constitutional rights under the due process and equal protection clauses of the Fourteenth Amendment and the due process clause of the Fifth Amendment not to be denied admission to the public schools of Montgomery County, Alabama on the ground of race or color.

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X

Plaintiffs allege that the policy, practice, custom and usage of the defendant Board in requiring the minor plaintiffs and other Negro children similarly situated to attend racially segregated schools in Montgomery County violates rights secured to plaintiffs and others similarly situated by the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States and Title 42, United States Code, Section 1983.

XI

Plaintiffs and those similarly situated have suffered and will continue to suffer irreparable injury and harm caused by the acts of the defendants complained of herein. Plaintiffs have no plain, adequate or complete remedy to redress

these wrongs other than this suit for injunctive relief. Any other remedy would be attended by such uncertainties and delays as to deny substantial relief, would involve a multiplicity of suits, cause further irreparable injury and occasion damage, vexation and inconvenience to the plaintiffs and those similarly situated.

WHEREFORE, plaintiffs respectfully pray that the Court advance this cause on the docket and order a speedy hearing of this action according to law and after such hearing:

1. Enter a decree enjoining defendants, their agents, representatives, employees and successors and all persons in active concert and participation with them from continuing to operate a compulsory biracial school system in Montgomery County, Alabama.

2. Enter a decree enjoining defendants, their agents, representatives, employees and successors and all persons in active concert and participation with them from continuing to maintain a dual scheme or pattern of school zone lines or attendance area lines based on race or color.

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3. Enter a decree enjoining defendants, their agents, representatives, employees and successors and all persons in active concert and participation with them from making initial assignments of pupils to the public schools of Montgomery County, Alabama on the basis of race or color.

4. Enter a decree enjoining defendants, their agents, representatives, employees and successors and all persons in active concert and participation with them from assigning and/or employing teachers, principals and other professional personnel to the public schools under their jurisdiction on the basis of race or color.

5. Enter a decree enjoining defendants, their agents, representatives, employees and successors and all persons in active concert and participation with them from approving employment contracts, budgets and disbursing funds on the basis of race or color.

6. Enter a decree enjoining defendants, their agents, representatives, employees and successors and all persons in active concert and participation with them from constructing elementary and high schools in Montgomery County, Alabama on the basis of the dual attendance areas based on race or color.

7. Enter a decree enjoining defendants, their agents, representatives, employees and successors and all persons in active concert and participation with them from programming and supporting extra-curricular activities which are limited solely to one or the other of the races.

8. Enter a decree enjoining defendants, their agents, representatives, employees and successors and all persons in active concert and participation with them from continuing to make any other distinctions in the operation of the schools under their jurisdiction which are based solely on race or color.

In the alternative, plaintiffs pray that this Court enter a decree directing said defendants to present a complete plan in a period of time to be determined by this Court for the reorganization of the entire school system of Montgomery County, Alabama into a unitary, nonracial system which shall include a plan for the assignment of pupils, teachers, principals and other professional school personnel on a nonracial basis; the drawing of school zone or attendance

area lines on a nonracial basis; the allotment of funds, the construction of schools, the approval of budgets on a nonracial basis; the programming of extra-curricular activities on a nonracial basis and the elimination of any other discrimination in the operation of the school system or curricula which are based solely on race or color.

Plaintiffs pray that if this Court directs said defendants to produce a desegregation plan that this Court will retain jurisdiction of this case pending court approval and full and complete implementation of said defendants' plan.

Plaintiffs pray that this Court will allow them their costs herein and grant such other, further and additional or alternative relief as may appear to the court from time to time to be equitable, just and proper.

Respectfully submitted,

FRED D. GRAY
JACK GREENBERG
CHARLES H. JONES, JR.
Attorneys for Plaintiffs

EXHIBIT A ANNEXED TO COMPLAINT

April 22, 1964

Montgomery County Board of Education
c/o Mr. Walter McKee, Superintendent
305 South Lawrence Street
Montgomery, Alabama

Dear Sirs:

This office is representing the parents of Negro school-age children who are entitled to attend public schools in Montgomery County, Alabama. These parents are residents of Montgomery County, Alabama and they have retained me to represent them in bringing an end to segregated schools in this County. On behalf of these parents I hereby petition you as members of the Board of Education of Montgomery County, and Mr. McKee as Superintendent, to begin immediately operating the schools under your jurisdiction according to the principles laid down by the U. S. Supreme Court on May 17, 1954 in the case of Brown vs. Board of Education; and we particularly request that you do the following:

(1) Assign pupils to schools under your jurisdiction without regard to their race or color.

(2) Assign principals, teachers and other professional personnel under your jurisdiction without regard to their race or color.

(3) Refrain from promulgating and enforcing a dual school system, a particular school zone line and

school attendance area line on the basis of race or color.

(4) Refrain from assigning Negro students attending Negro schools or predominantly Negro Elementary Schools or predominantly Negro High Schools on the basis of race or color.

(5) Refrain from assigning White students attending White Schools or predominantly White Elementary Schools or predominantly White High Schools on the basis of race and color.

(6) Refrain from constructing elementary or high schools and any other schools on the basis of the needs of each of the two races separately.

(7) Refrain from continuing to make any other distinction in the operation of the schools under your jurisdiction which are based solely on race or color.

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On behalf of said parents, we further request that the Board of Education of Montgomery County come forward with a complete plan immediately for reorganization of the entire dual school system under your jurisdiction into a unitarian nonracial system, which plan should provide for reassignment of the teachers, principals and other professional personnel without regard to race or color; the participation of all students in extra-curricula activities for which they are eligible without regard to race or color and for the elimination of all other distinctions in the operation of public schools under your jurisdiction which are based on race or color.

May we hear from you immediately in connection with this matter.

Yours very truly,

F. D. Gray

FDG/dmd

CCs:

Mr. Harold M. Harris
Mr. Fred Bear
Dr. H. P. Dawson
Mr. George A. Dozier
Dr. W. E. Goodwin
Mrs. Isabelle B. Thomasson
Dr. Robert Parker

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Plaintiffs' Motion for Preliminary Injunction

(Filed May 11, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Plaintiffs, upon the complaint filed in the above cause, move this court for a preliminary injunction, pending the final hearing and determination of this cause to enjoin the defendants, their agents, servants, employees, successors and all persons in active concert and participation with them from continuing to operate a compulsory biracial school system in Montgomery County, Alabama, continuing to maintain a dual scheme or pattern of school zone lines or attendance area lines based on race or color, making initial assignments of pupils to the public schools of Montgomery County, Alabama on the basis of race or color, assigning and/or employing teachers, principals and other professional personnel to the public schools under their jurisdiction on the basis of race or color, approving employment contracts and budgets, and from disbursing funds on the basis of race or color, constructing elementary and high

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schools in Montgomery County, Alabama on the basis of the dual attendance areas based on race or color, programming and supporting extra-curricular activities which are

limited solely to one or the other of the races, continuing to make any other distinctions in the operation of the schools under their jurisdiction which are based solely on race or color.

In the alternative, plaintiffs pray that this Court enter a decree directing said defendants to present a complete plan in a period of time to be determined by this Court for the reorganization of the entire school system of Montgomery County, Alabama, into a unitary, nonracial system which shall include a plan for the assignment of pupils, teachers, principals and other professional school personnel on a nonracial basis; the drawing of school zone or attendance area lines on a nonracial basis; the allotment of funds, the construction of schools, the approval of budgets on a nonracial basis; the programming of extra-curricular activities on a nonracial basis and the elimination of any other discrimination in the operation of the school system or curricula which are based solely on race or color.

Plaintiffs pray that if this Court directs said defendants to produce a desegregation plan that this Court will retain jurisdiction of this case pending court approval and full and complete implementation of said defendants' plan.

Plaintiffs pray that this Court will allow them their costs herein and grant such other, further and additional or alternative relief as may appear to the court from time to time to be equitable, just and proper.

Respectfully submitted,

FRED D. GRAY
JACK GREENBERG
CHARLES H. JONES, JR.
Attorneys for Plaintiffs

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Order Appointing Amicus Curiae

(Filed May 18, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

It appearing to the Court that this case has been filed as of May 11, 1964, with the Clerk of this Court by the plaintiffs, acting by and through their attorneys, and

It further appearing that the said plaintiffs ask this Court for preliminary and permanent injunctive relief against the Montgomery County Board of Education and its members and the Superintendent of Education of Montgomery County, Alabama;

This Court is of the opinion that the public interests in the administration of justice should be represented in this proceeding and that it will be of assistance to the Court to have the benefit of the views of counsel for the United States as amici curiae, and that this Court is entitled at any time to call upon the law office of the United States to serve in that capacity. It is, therefore, the

ORDER, JUDGMENT and DECREE of this Court that the Honorable Ben Hardeman, United States Attorney for this

district, and the Honorable John Doar, Attorney, Civil Rights Division, Department of Justice, Washington, D. C., and/or any other attorney with the Department of Justice designated by the Honorable Robert Kennedy, Attorney General of the United States, be and each is hereby ap-

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pointed as amicus curiae counsel in this cause, to assist the Court in the speedy and just determination of the issues involved.

Done, this the 18th day of May, 1964.

FRANK M. JOHNSON, JR.
United States District Judge

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Interrogatories

(Filed May 26, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

To: Arlam Carr, Jr., a minor, by Arlam Carr and Johnnie Carr, his parents and next friends.

Now comes the Montgomery County Board of Education, one of the Defendants in the above entitled action, pursuant to Rule 33 of the Federal Rules of Civil Procedure, and files the following interrogatories to be answered under oath within fifteen days of the time service is made upon you.

1. (a) State your present age, giving your birthday and your present resident address.

(b) With whom is the minor complainant presently residing?

(c) State the name of the person or persons who have the care, custody and control of the minor.

2. For how long have you resided or lived at this address?

3. Are you attending a public school within the Montgomery County School System for the current school year 1963-1964?

4. If your answer to Interrogatory No. 3 was in the affirmative, state the following:

a. The name of the school you are attending.

b. The address of the school that you are attending.

c. The grade to which you are assigned.

5. If your answer to Interrogatory No. 3 was in the negative, state the following:

a. The name of the school you are attending.

b. The address of the school that you are attending.

c. The grade to which you are assigned.

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6. For how many years prior to the school year 1963-1964, did you attend a public school in the City of Montgomery or in Montgomery County, Alabama?

7. State the name or names of all schools attended by you in the Montgomery County School System prior to the school year 1963-1964.

8. State your address while in attendance at each of these schools.

9. Have you or your parents ever made an individual request to transfer from one school to another within the Montgomery County Public School System?

10. If your answer to Interrogatory No. 9 is in the affirmative, please state the following:

a. The person or agency to whom this request was made.

b. The date on which this request was made.

c. State whether this request was made in writing or orally and give full details of the request or application and if such request was made in writing attach a copy thereof.

d. All action taken upon this request or application.

e. Did you receive notice of this action in writing? If so, please attach a copy of this notice. Give full details of action taken upon request or application.

f. Did you file an exception or any form of objection to the action taken on the request or application?

g. Did you file an appeal of any type to any court from the action of the Board?

11. Have you ever failed to be promoted from one grade to the next successive grade?

12. If the answer to the preceding interrogatory is in the affirmative, please state the grade or grades which were required to be repeated.

13. Please attach to your answers copies or photostatic copies of your report cards for each year during which you were a pupil in the Montgomery County Public School System.

14. Have you ever been expelled as a pupil from any school in the Montgomery County Public School System?

If so, give full details of your expulsion and explain fully all action taken.

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15. Have you ever been suspended as a pupil from any public school in the Montgomery County Public School System? If so, give full details and fully explain the action taken.

16. Have any disciplinary actions been taken against you by Montgomery County School authorities? If so, give complete details as to each such disciplinary action.

17. (a) Do you now desire to transfer from one school to another within the public school system of Montgomery County, Alabama?

(b) If your answer to Interrogatory No. 17 (a) is in the affirmative, then state the name of the particular school into which you wish to transfer.

(c) If your answer to Interrogatory No. 17 (a) above is in the affirmative, please state whether you or your parents have made a request for this transfer.

18. If your answer to Interrogatory No. 17 (c) is in the affirmative, please state the following:

a. The person or agency to whom this request was made.

b. Was the request made orally or in writing—if in writing, please attach a copy or a photostatic copy thereof to your answer.

c. The date that this request was made.

d. The action taken upon this request or application.

e. Did you file an exception or any form of objection to the action taken on this request?

f. Did you file an appeal of any type from the action taken on your request?

19. What is the name of the first school which you attended within the Montgomery County Public School System?

20. Have you employed a lawyer to represent you in the case which you have filed against the Board of Education of Montgomery County, Alabama?

21. Will you pay a lawyer to represent you in the case which you have filed against the Board of Education of Montgomery County?

22. Have any grievances been presented by you individually or by your parents and next friends individually to the Montgomery County Board of Education or to any of the Defendants in this case?

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23. Explain in detail the "dual attendance areas" as set out in your complaint and state how you claim to be affected by such "dual attendance areas".

24. State all specific demands that you or your parents and next friends have made upon the Montgomery County Board of Education. Did you give your name to the Board when making such specific demands?

25. What is your grade assignment for the school year 1964-1965?

26. What school, applicable to your grade assignment for the school year 1964-1965, is the closest to your present resident address?

27. (a) Did you or your parents make written application for initial assignment to a specific school?

(b) If your answer to Interrogatory No. 27 (a) is in the affirmative, then state into which school you made written application for admission.

(c) Have you been or were you initially assigned to the school to which you made written application?

28. You state in your bill of complaint that the Alabama School Placement Law provides inadequate relief. Will you state in detail all relief that you have sought under the Alabama School Placement Law and state the specific action taken on the requested relief.

29. Have you or your parents specifically demanded relief or any action under the Alabama School Placement Law?

HILL, ROBISON AND BELSER

Certificate of Service (omitted in printing)

Interrogatories

(Filed May 26, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

To: Bathsheba L. Thompson, a minor, by Bishop S. Thompson, Sr., and Lois E. Thompson, her parents and next friends.

Now comes the Montgomery County Board of Education, one of the Defendants in the above entitled action, pursuant to Rule 33 of the Federal Rules of Civil Procedure, and files the following interrogatories to be answered under oath within fifteen days of the time service is made upon you.

1. (a) State your present age, giving your birthday and your present resident address.

(b) With whom is the minor complainant presently residing?

(c) State the name of the person or persons who have the care, custody and control of the minor.

2. For how long have you resided or lived at this address?

3. Are you attending a public school within the Montgomery County School System for the current school year 1963-1964?

4. If your answer to Interrogatory No. 3 was in the affirmative, state the following:

a. The name of the school you are attending.

b. The address of the school that you are attending.

c. The grade to which you are assigned.

5. If your answer to Interrogatory No. 3 was in the negative, state the following:

a. The name of the school you are attending.

b. The address of the school that you are attending.

c. The grade to which you are assigned.

6. For how many years prior to the school year 1963-1964, did you attend a public school in the City of Montgomery or in Montgomery County, Alabama?

7. State the name or names of all schools attended by you in the Montgomery County School System prior to the school year 1963-1964.

8. State your address while in attendance at each of these schools.

9. Have you or your parents ever made an individual request to transfer from one school to another within the Montgomery County Public School System?

10. If your answer to Interrogatory No. 9 is in the affirmative, please state the following:

a. The person or agency to whom this request was made.

b. The date on which this request was made.

c. State whether this request was made in writing or orally and give full details of the request or application and if such request was made in writing attach a copy thereof.

d. All action taken upon this request or application.

e. Did you receive notice of this action in writing? If so, please attach a copy of this notice. Give full details of action taken upon request or application.

f. Did you file an exception or any form of objection to the action taken on the request or application?

g. Did you file an appeal of any type to any court from the action of the Board?

11. Have you ever failed to be promoted from one grade to the next successive grade?

12. If the answer to the preceding interrogatory is in the affirmative, please state the grade or grades which were required to be repeated.

13. Please attach to your answers copies or photostatic copies of your report cards for each year during which you were a pupil in the Montgomery County Public School System.

14. Have you ever been expelled as a pupil from any school in the Montgomery County Public School System? If so, give full details of your expulsion and explain fully all action taken.

15. Have you ever been suspended as a pupil from any public school in the Montgomery County Public School

System? If so, give full details and fully explain the action taken.

16. Have any disciplinary actions been taken against you by Montgomery County School authorities? If so, give complete details as to each such disciplinary action.

17. (a) Do you now desire to transfer from one school to another within the public school system of Montgomery County, Alabama?

(b) If your answer to Interrogatory No. 17 (a) is in the affirmative, then state the name of the particular school into which you wish to transfer.

(c) If your answer to Interrogatory No. 17 (a) above is in the affirmative, please state whether you or your parents have made a request for this transfer.

18. If your answer to Interrogatory No. 17 (c) is in the affirmative, please state the following:

a. The person or agency to whom this request was made.

b. Was the request made orally or in writing—if in writing, please attach a copy or a photostatic copy thereof to your answer.

c. The date that this request was made.

d. The action taken upon this request or application.

e. Did you file an exception or any form of objection to the action taken on this request?

f. Did you file an appeal of any type from the action taken on your request?

19. What is the name of the first school which you attended within the Montgomery County Public School System?

20. Have you employed a lawyer to represent you in the case which you have filed against the Board of Education of Montgomery County, Alabama?

21. Will you pay a lawyer to represent you in the case which you have filed against the Board of Education of Montgomery County?

22. Have any grievances been presented by you individually or by your parents and next friends individually to the Montgomery County Board of Education or to any of the Defendants in this case?

—22—

23. Explain in detail the "dual attendance areas" as set out in your complaint and state how you claim to be affected by such "dual attendance areas".

24. State all specific demands that you or your parents and next friends have made upon the Montgomery County Board of Education. Did you give your name to the Board when making such specific demands?

25. What is your grade assignment for the school year 1964-1965?

26. What school, applicable to your grade assignment for the school year 1964-1965, is the closest to your present resident address?

27. (a) Did you or your parents make written application for initial assignment to a specific school?

(b) If your answer to Interrogatory No. 27 (a) is in the affirmative, then state into which school you made written application for admission.

(c) Have you been or were you initially assigned to the school to which you made written application?

28. You state in your bill of complaint that the Alabama School Placement Law provides inadequate relief. Will you state in detail all relief that you have sought under the Alabama School Placement Law and state the specific action taken on the requested relief.

29. Have you or your parents specifically demanded relief or any action under the Alabama School Placement Law?

HILL, ROBISON AND BELSER

Certificate of Service (omitted in printing)

Interrogatories

(Filed May 26, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

To: John W. Thompson, a minor, by Bishop S. Thompson, Sr., and Lois E. Thompson, his parents and next friends.

Now comes the Montgomery County Board of Education, one of the Defendants in the above entitled action, pursuant to Rule 33 of the Federal Rules of Civil Procedure, and files the following interrogatories to be answered under oath within fifteen days of the time service is made upon you.

1. (a) State your present age, giving your birthday and your present resident address.

(b) With whom is the minor complainant presently residing?

(c) State the name of the person or persons who have the care, custody and control of the minor.

2. For how long have you resided or lived at this address?

3. Are you attending a public school within the Montgomery County School System for the current school year 1963-1964?

4. If your answer to Interrogatory No. 3 was in the affirmative, state the following:

a. The name of the school you are attending.

b. The address of the school that you are attending.

c. The grade to which you are assigned.

5. If your answer to Interrogatory No. 3 was in the negative, state the following:

a. The name of the school you are attending.

b. The address of the school that you are attending.

c. The grade to which you are assigned.

6. For how many years prior to the school year 1963-1964, did you attend a public school in the City of Montgomery or in Montgomery County, Alabama?

7. State the name or names of all schools attended by you in the Montgomery County School System prior to the school year 1963-1964.

8. State your address while in attendance at each of these schools.

9. Have you or your parents ever made an individual request to transfer from one school to another within the Montgomery County Public School System?

10. If your answer to Interrogatory No. 9 is in the affirmative, please state the following:

a. The person or agency to whom this request was made.

b. The date on which this request was made.

c. State whether this request was made in writing or orally and give full details of the request or application and if such request was made in writing attach a copy thereof.

d. All action taken upon this request or application.

e. Did you receive notice of this action in writing? If so, please attach a copy of this notice. Give full details of action taken upon request or application.

f. Did you file an exception or any form of objection to the action taken on the request or application?

g. Did you file an appeal of any type to any court from the action of the Board?

11. Have you ever failed to be promoted from one grade to the next successive grade?

12. If the answer to the preceding interrogatory is in the affirmative, please state the grade or grades which were required to be repeated.

13. Please attach to your answers copies or photostatic copies of your report cards for each year during which you were a pupil in the Montgomery County Public School System.

14. Have you ever been expelled as a pupil from any school in the Montgomery County Public School System? If so, give full details of your expulsion and explain fully all action taken.

15. Have you ever been suspended as a pupil from any public school in the Montgomery County Public School

System? If so, give full details and fully explain the action taken.

16. Have any disciplinary actions been taken against you by Montgomery County School authorities? If so, give complete details as to each such disciplinary action.

17. (a) Do you now desire to transfer from one school to another within the public school system of Montgomery County, Alabama?

(b) If your answer to Interrogatory No. 17 (a) is in the affirmative, then state the name of the particular school into which you wish to transfer.

(c) If your answer to Interrogatory No. 17 (a) above is in the affirmative, please state whether you or your parents have made a request for this transfer.

18. If your answer to Interrogatory No. 17 (c) is in the affirmative, please state the following:

a. The person or agency to whom this request was made.

b. Was the request made orally or in writing—if in writing, please attach a copy or a photostatic copy thereof to your answer.

c. The date that this request was made.

d. The action taken upon this request or application.

e. Did you file an exception or any form of objection to the action taken on this request?

f. Did you file an appeal of any type from the action taken on your request?

19. What is the name of the first school which you attended within the Montgomery County Public School System?

20. Have you employed a lawyer to represent you in the case which you have filed against the Board of Education of Montgomery County, Alabama?

21. Will you pay a lawyer to represent you in the case which you have filed against the Board of Education of Montgomery County?

22. Have any grievances been presented by you individually or by your parents and next friends individually to the Montgomery County Board of Education or to any of the Defendants in this case?

—26—

23. Explain in detail the "dual attendance areas" as set out in your complaint and state how you claim to be affected by such "dual attendance areas".

24. State all specific demands that you or your parents and next friends have made upon the Montgomery County Board of Education. Did you give your name to the Board when making such specific demands?

25. What is your grade assignment for the school year 1964-1965?

26. What school, applicable to your grade assignment for the school year 1964-1965, is the closest to your present resident address?

27. (a) Did you or your parents make written application for initial assignment to a specific school?

(b) If your answer to Interrogatory No. 27 (a) is in the affirmative, then state into which school you made written application for admission.

(c) Have you been or were you initially assigned to the school to which you made written application?

28. You state in your bill of complaint that the Alabama School Placement Law provides inadequate relief. Will you state in detail all relief that you have sought under the Alabama School Placement Law and state the specific action taken on the requested relief.

29. Have you or your parents specifically demanded relief or any action under the Alabama School Placement Law?

HILL, ROBISON AND BELSER

Certificate of Service (omitted in printing)

Interrogatories

(Filed May 26, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

To: James G. Thompson, a minor, by Bishop S. Thompson, Sr., and Lois E. Thompson, his parents and next friends.

Now comes the Montgomery County Board of Education, one of the Defendants in the above entitled action, pursuant to Rule 33 of the Federal Rules of Civil Procedure, and files the following interrogatories to be answered under oath within fifteen days of the time service is made upon you.

1. (a) State your present age, giving your birthday and your present resident address.

(b) With whom is the minor, complainant presently residing?

(c) State the name of the person or persons who have the care, custody and control of the minor.

2. For how long have you resided or lived at this address?

3. Are you attending a public school within the Montgomery County School System for the current school year 1963-1964?

4. If your answer to Interrogatory No. 3 was in the affirmative, state the following:

a. The name of the school you are attending.

b. The address of the school that you are attending.

c. The grade to which you are assigned.

5. If your answer to Interrogatory No. 3 was in the negative, state the following:

a. The name of the school you are attending.

b. The address of the school that you are attending.

c. The grade to which you are assigned.

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6. For how many years prior to the school year 1963-1964, did you attend a public school in the City of Montgomery or in Montgomery County, Alabama?

7. State the name or names of all schools attended by you in the Montgomery County School System prior to the school year 1963-1964.

8. State your address while in attendance at each of these schools.

9. Have you or your parents ever made an individual request to transfer from one school to another within the Montgomery County Public School System?

10. If your answer to Interrogatory No. 9 is in the affirmative, please state the following:

a. The person or agency to whom this request was made.

b. The date on which this request was made.

c. State whether this request was made in writing or orally and give full details of the request or application and if such request was made in writing attach a copy thereof.

d. All action taken upon this request or application.

e. Did you receive notice of this action in writing? If so, please attach a copy of this notice. Give full details of action taken upon request or application.

f. Did you file an exception or any form of objection to the action taken on the request or application?

g. Did you file an appeal of any type to any court from the action of the Board?

11. Have you ever failed to be promoted from one grade to the next successive grade?

12. If the answer to the preceding interrogatory is in the affirmative, please state the grade or grades which were required to be repeated.

13. Please attach to your answers copies or photostatic copies of your report cards for each year during which you were a pupil in the Montgomery County Public School System.

14. Have you ever been expelled as a pupil from any school in the Montgomery County Public School System? If so, give full details of your expulsion and explain fully all action taken.

15. Have you ever been suspended as a pupil from any public school in the Montgomery County Public School

System? If so, give full details and fully explain the action taken.

16. Have any disciplinary actions been taken against you by Montgomery County School authorities? If so, give complete details as to each such disciplinary action.

17. (a) Do you now desire to transfer from one school to another within the public school system of Montgomery County, Alabama?

(b) If your answer to Interrogatory No. 17 (a) is in the affirmative, then state the name of the particular school into which you wish to transfer.

(c) If your answer to Interrogatory No. 17 (a) is in the affirmative, please state whether you or your parents have made a request for this transfer.

18. If your answer to Interrogatory No. 17 (c) is in the affirmative, please state the following:

a. The person or agency to whom this request was made.

b. Was the request made orally or in writing—if in writing, please attach a copy or a photostatic copy thereof to your answer.

c. The date that this request was made.

d. The action taken upon this request or application.

e. Did you file an exception or any form of objection to the action taken on this request?

f. Did you file an appeal of any type from the action taken on your request?

19. What is the name of the first school which you attended within the Montgomery County Public School System?

20. Have you employed a lawyer to represent you in the case which you have filed against the Board of Education of Montgomery County, Alabama?

21. Will you pay a lawyer to represent you in the case which you have filed against the Board of Education of Montgomery County?

22. Have any grievances been presented by you individually or by your parents and next friends individually to the Montgomery County Board of Education or to any of the Defendants in this case?

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23. Explain in detail the "dual attendance areas" as set out in your complaint and state how you claim to be affected by such "dual attendance areas".

24. State all specific demands that you or your parents and next friends have made upon the Montgomery County Board of Education. Did you give your name to the Board when making such specific demands?

25. What is your grade assignment for the school year 1964-1965?

26. What school, applicable to your grade assignment for the school year 1964-1965, is the closest to your present resident address?

27. (a) Did you or your parents make written application for initial assignment to a specific school?

(b) If your answer to Interrogatory No. 27 (a) is in the affirmative, then state into which school you made written application for admission.

(c) Have you been or were you initially assigned to the school to which you made written application?

28. You state in your bill of complaint that the Alabama School Placement Law provides inadequate relief. Will you state in detail all relief that you have sought under the Alabama School Placement Law and state the specific action taken on the requested relief.

29. Have you or your parents specifically demanded relief or any action under the Alabama School Placement Law?

HILL, ROBISON AND BELSER

Certificate of Service (omitted in printing)

Interrogatories

(Filed May 26, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

To: Phillip L. Thompson, a minor, by Bishop S. Thompson, Sr., and Lois E. Thompson, his parents and next friends.

Now comes the Montgomery County Board of Education, one of the Defendants in the above entitled action, pursuant to Rule 33 of the Federal Rules of Civil Procedure, and files the following interrogatories to be answered under oath within fifteen days of the time service is made upon you.

1. (a) State your present age, giving your birthday and your present resident address.

(b) With whom is the minor complainant presently residing?

(c) State the name of the person or persons who have the care, custody and control of the minor.

2. For how long have you resided or lived at this address?

3. Are you attending a public school within the Montgomery County School System for the current school year 1963-1964?

4. If your answer to Interrogatory No. 3 was in the affirmative, state the following:

a. The name of the school you are attending.

b. The address of the school that you are attending.

c. The grade to which you are assigned.

5. If your answer to Interrogatory No. 3 was in the negative, state the following:

a. The name of the school you are attending.

b. The address of the school that you are attending.

c. The grade to which you are assigned.

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6. For how many years prior to the school year 1963-1964, did you attend a public school in the City of Montgomery or in Montgomery County, Alabama?

7. State the name or names of all schools attended by you in the Montgomery County School System prior to the school year 1963-1964.

8. State your address while in attendance at each of these schools.

9. Have you or your parents ever made an individual request to transfer from one school to another within the Montgomery County Public School System?

10. If your answer to Interrogatory No. 9 is in the affirmative, please state the following:

a. The person or agency to whom this request was made.

b. The date on which this request was made.

c. State whether this request was made in writing or orally and give full details of the request or application and if such request was made in writing attach a copy thereof.

d. All action taken upon this request or application.

e. Did you receive notice of this action in writing? If so, please attach a copy of this notice. Give full details of action taken upon request or application.

f. Did you file an exception or any form of objection to the action taken on the request or application?

g. Did you file an appeal of any type to any court from the action of the Board?

11. Have you ever failed to be promoted from one grade to the next successive grade?

12. If the answer to the preceding interrogatory is in the affirmative, please state the grade or grades which were required to be repeated.

13. Please attach to your answers copies or photostatic copies of your report cards for each year during which you were a pupil in the Montgomery County Public School System.

14. Have you ever been expelled as a pupil from any school in the Montgomery County Public School System? If so, give full details of your expulsion and explain fully all action taken.

15. Have you ever been suspended as a pupil from any public school in the Montgomery County Public School

System? If so, give full details and fully explain the action taken.

16. Have any disciplinary actions been taken against you by Montgomery County School authorities? If so, give complete details as to each such disciplinary action.

17. (a) Do you now desire to transfer from one school to another within the public school system of Montgomery County, Alabama?

(b) If your answer to Interrogatory No. 17 (a) is in the affirmative, then state the name of the particular school into which you wish to transfer.

(c) If your answer to Interrogatory No. 17 (a) above is in the affirmative, please state whether you or your parents have made a request for this transfer.

18. If your answer to Interrogatory No. 17 (c) is in the affirmative, please state the following:

a. The person or agency to whom this request was made.

b. Was the request made orally or in writing—if in writing, please attach a copy or a photostatic copy thereof to your answer.

c. The date that this request was made.

d. The action taken upon this request or application.

e. Did you file an exception or any form of objection to the action taken on this request?

f. Did you file an appeal of any type from the action taken on your request?

19. What is the name of the first school which you attended within the Montgomery County Public School System?

20. Have you employed a lawyer to represent you in the case which you have filed against the Board of Education of Montgomery County, Alabama?

21. Will you pay a lawyer to represent you in the case which you have filed against the Board of Education of Montgomery County?

22. Have any grievances been presented by you individually or by your parents and next friends individually to the Montgomery County Board of Education or to any of the Defendants in this case?

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23. Explain in detail the "dual attendance areas" as set out in your complaint and state how you claim to be affected by such "dual attendance areas".

24. State all specific demands that you or your parents and next friends have made upon the Montgomery County Board of Education. Did you give your name to the Board when making such specific demands?

25. What is your grade assignment for the school year 1964-1965?

26. What school, applicable to your grade assignment for the school year 1964-1965, is the closest to your present resident address?

27. (a) Did you or your parents make written application for initial assignment to a specific school?

(b) If your answer to Interrogatory No. 27 (a) is in the affirmative, then state into which school you made written application for admission.

(c) Have you been or were you initially assigned to the school to which you made written application?

28. You state in your bill of complaint that the Alabama School Placement Law provides inadequate relief. Will you state in detail all relief that you have sought under the Alabama School Placement Law and state the specific action taken on the requested relief.

29. Have you or your parents specifically demanded relief or any action under the Alabama School Placement Law?

HILL, ROBISON AND BELSER

Certificate of Service (omitted in printing)

Motion to Dismiss

(Filed May 30, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Come now the Defendants, separately and severally, and move this Honorable Court to dismiss the complaint and the motion for preliminary injunction as heretofore filed and as grounds therefor sets forth the following, separately and severally:

I

The complaint fails to state a cause of action upon which relief can be granted.

II

The complaint fails to set out sufficient facts to make it a proper class action.

III

The complaint fails to allege legally sufficient efforts by the Plaintiffs to exercise any Constitutional right before bringing this action.

IV

The complaint fails to set out legally sufficient facts to show that the Plaintiffs belong to a class which has made

legal effort to exercise any Constitutional rights and that these rights have been denied them.

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V

The Plaintiffs seek an Order from this Court directing and requiring the Defendants to racially integrate the public school system of Montgomery County without showing a denial of any Constitutional right of an individual pupil or person; therefore, this purported class action is not properly brought.

VI

The complaint does not set out facts which make it a proper class action and Defendants deny all and singular the allegations made by Petitioners that they represent a class too large to be made parties to this cause and demand strict proof thereof.

VII

The Plaintiffs have not been denied any rights nor do they represent a class which has been denied any rights. Plaintiffs have not heretofore individually requested the relief that they now ask this Court to order. It is recognized that the relief requested by Plaintiffs; that is, the transfer from one school to another is properly handled on an individual basis. Plaintiffs, in seeking en blanc injunctive relief without making individual application or request for transfer or for individual assignment, improperly ask this Court to judicially determine and construe various administrative factors. The Plaintiffs, therefore, cannot properly nor legally maintain this purported class action.

VIII

The Defendants do not have an affirmative Constitutional duty to provide integrated education. The Defendants are entitled to an opportunity to pass upon each individual request, which the Plaintiffs have not made, therefore, Plaintiffs cannot properly nor legally maintain this purported class action.

IX

The complaint fails to allege any action taken by these Defendants by which the Plaintiffs were denied any Constitutional right.

HILL, ROBISON AND BELSER
Attorneys for the Defendants

Certificates of Service (omitted in printing)

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Notice of Taking Deposition

(Filed June 3, 1964)

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

HON. BEN HARDEMAN, U. S. Attorney
Post Office Building
Montgomery, Alabama

HON. JOHN DOAR, U. S. Attorney
Justice Department
Washington, D. C.

HILL, ROBISON AND BELSER
Attorneys and Counsellors at Law
36 South Perry Street
Montgomery, Alabama

MR. WALTER MCKEE, Superintendent
Montgomery County Schools
305 South Lawrence Street
Montgomery, Alabama

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Please take notice that at 9:00 a.m. on the 9th day of June, 1964, in the Attorneys' Conference Room, Second Floor, Post Office Building, Montgomery, Alabama, the Plaintiffs in the above entitled action will take the deposition of Walter McKee, Superintendent of Schools of Montgomery County, Alabama, upon oral examination pursuant

to Federal Rules of Civil Procedure before Mrs. Dorothy Jackson, a Notary Public, or some other officer authorized by law to administer oaths.

Please take further notice that Walter McKee is hereby required to produce upon such examination all papers, records, books and other documentary evidence showing the following:

1. Names and addresses of all white and Negro schools in Montgomery County, Alabama.

2. School districts in Montgomery County, Alabama for white children-Negro children.

3. Money spent in Montgomery County, Alabama for white schools-Negro schools.

4. Names and addresses of all students attending schools—white and Negro, showing which school each attends.

5. Names and addresses of all principals, teachers and other professional personnel, showing their race and what schools they are assigned to.

6. Budgets for Negro and white schools.

7. Copies of all correspondence passing between said Board and any of the attorneys for the plaintiffs.

8. Names, addresses and race of each student who has been transferred from one school in Montgomery County to another school in said County showing the name of the schools from which and to which the students were transferred.

9. The construction of schools based on race.

10. The number of school buses assigned to each school, white and Negro.

11. All other records of said Board which in any way pertains to or will reflect the operation and maintenance of a bi-racial school system in Montgomery County, Alabama.

12. Copies of all petitions filed with Montgomery County Board of Education requesting desegregation of schools in said County, and copies of all documents showing action taken by said board to desegregate schools in said County since May, 1954.

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The oral examination will continue from day to day until completed. You are invited to attend and cross-examine.

Done, this the 3rd day of June, 1964.

FRED D. GRAY
JACK GREENBERG
CHARLES JONES, JR.
Attorneys for Plaintiffs

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Motion to Stay Deposition

(Filed June 5, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Comes now Walter McKee, one of the Defendants in the above entitled cause and moves that the deposition as scheduled by the Plaintiffs be stayed and continued until a date set and determined by the Court, subsequent to June 10, 1964, and as grounds for said motion, sets down and assigns the following separately and severally:

I

This Defendant, on May 26, 1964, propounded interrogatories addressed to each of the Plaintiffs in this case. These interrogatories elicit information from Plaintiffs as to their status, as said status affects the propriety of these Plaintiffs maintaining the purported class action, which is the basis of this suit. These said interrogatories, as filed by this Defendant, are required to be answered on or before June 10, 1964, and as yet have not been answered. Plaintiffs, in the notice served on this Defendant on June 4, 1964, have set and scheduled the aforementioned deposition of this Defendant for June 9, 1964.

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II

This Defendant, on May 30, 1964, filed a motion to dismiss the complaint as heretofore filed and which said motion attacks the complair t as being an improper class action

in that Plaintiffs do not show nor allege that they are properly members of the class they seek to represent.

III

This Defendant, therefore, prior to the notice of deposition, as served upon him by Plaintiff, requested discovery which goes to the propriety of the action itself and to the Plaintiffs' standing before this Court.

IV

Many of the allegations as contained in Plaintiffs' complaint are general, vague and uncertain and the answers to the interrogatories, as propounded by this Defendant, are necessary in order for him to properly know what specific act or action he is called upon to defend.

V

Orderly procedure and proper disposition of the matter before the Court require that the Plaintiffs properly identify themselves and establish their standing before the Court prior to a detailed discovery proceeding involving the general matters as requested to be furnished in the subpoena for deposition as heretofore served on this Defendant.

THEREFORE, THE PREMISES CONSIDERED, Defendant moves this Honorable Court to continue and to stay the deposition as heretofore requested by the Plaintiffs from June 9, 1964, to a date as set and determined by the Court subsequent to June 10, 1964, or subsequent to the date on which the Plaintiffs answer the interrogatories heretofore filed in this matter and served on them.

HILL, ROBISON AND BELSER
Attorneys for Defendant, Walter McKee

Certificates of Service (omitted in printing)

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Order Denying Motion to Stay Deposition

(Filed June 5, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

There is now presented to this Court the motion of Walter McKee, one of the defendants in this case, wherein he seeks to have this Court stay the taking of the deposition as scheduled by the plaintiffs for June 9, 1964. The basis for the motion is that the defendant on May 26, 1964, propounded interrogatories addressed to each of the plaintiffs in this case and that these interrogatories should be answered prior to the time the deposition of the defendant McKee is taken for the reason that the interrogatories are designed to elicit from plaintiffs information relative to their right to maintain this class action.

From a study of the complaint in this case, the interrogatories propounded by the defendant to the plaintiffs, and the motion of the defendant McKee now presented, this Court is of the opinion that the motion is due to be denied. It appears from a study of the interrogatories that the defendant through the use of interrogatories seeks to elicit information from the plaintiffs concerning their exhausting or failing to exhaust their administrative remedies prior to filing this lawsuit. It is basic in these cases that there is no necessity to exhaust administrative remedies prior to resorting to the courts.

In consideration of the foregoing and for good cause, it is the ORDER, JUDGMENT and DECREE of this Court that the motion of the defendant Walter McKee, filed herein on

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June 5, 1964, seeking to have this Court stay the taking of his deposition by attorneys for the plaintiffs from the scheduled date of June 9, 1964, be and the same is hereby denied.

Done, this the 5th day of June, 1964.

FRANK M. JOHNSON, JR.
United States District Judge

Answer to Interrogatories

(Filed June 10, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Pursuant to interrogatories propounded by the defendant, Montgomery County Board of Education, Johnnie Carr, one of the parents and next friends of Arlam Carr, Jr., makes the following answers to the interrogatories under oath, and as answer to said interrogatories saith as follows:

1. (a) My name is Johnnie Carr, the minor plaintiff's name is Arlam Carr, Jr., he was born January 8, 1951 and resides at 720 South Hall Street.

(b) His parents, Arlam Carr and Johnnie Carr.

(c) Same as (b) above.

2. Over thirteen years.

3. Yes.

4. (a) Alabama State Laboratory High School.

(b) 915 South Jackson.

(c) Eighth.

5. Not applicable.

6. Seventh.

7. Alabama State Laboratory High School.

8. 720 South Hall Street.

9. No.

10. Not applicable.

11. No.

12. Not applicable.

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13. I am attaching copies of report cards for the last four years. These are the only ones available.

14. No.

15. No.

16. No.

17. I am desirous of obtaining all the relief prayed for in my complaint heretofore filed in this Court.

18. See 17 above.

19. Alabama State Laboratory High School.

20. Yes.

21 Proper arrangements have been made with my attorney so that he may properly represent me in this case.

22. My attorney made certain requests on my behalf to the Montgomery County Board of Education, a copy of

the requests are attached to and made part of the complaint.

23. The "dual attendance areas" refer to geographical lines drawn whereby white students attend certain schools and Negro students attend certain schools.

24. See 22 above.

25. Ninth.

26. Houston Hills Junior High School or Alabama State Laboratory High School.

27. (a) No.

(b) Not applicable.

(c) Not applicable.

28. I have not sought any relief under the Alabama School Placement Law.

29. No.

MRS. JOHNNIE CARR

(Sworn to June 10, 1964.)

Certificate of Service (omitted in printing).

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REPORT OF PUPIL PROGRESS

MONTGOMERY PUBLIC SCHOOLS

MONTGOMERY, ALABAMA

Ala. State College Lab. SCHOOL

NAME Arlam Carr

GRADE Fifth YEAR 19 6 0 19 6 1

TO PARENTS:

In giving an estimate of your child's progress we are using a combination of grades and written comments when necessary. In doing this we are attempting to give you a clearer picture of his progress not only in his studies but in the development of certain habits and attitudes which greatly influence his character.

A report of your child's progress will be sent to you at the end of each six weeks. If you desire further information concerning your child you are urged to confer with the teacher at a time when she is not busy with her class.

You are cordially invited to visit the school at any time.

PRINCIPAL

TEACHER

PRINCIPAL

TEACHER

ASSIGNED TO 4th GRADE FOR 9 196

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Pupil's Name Arlene Carr

School _____ Date Entered _____

School _____ Date Entered _____

TOTAL DAYS PRESENT	29	27	26	33	25	32
TOTAL DAYS ABSENT	0	0	0	0	0	0
TOTAL DAYS TARDY	0	0	0		0	0

CODE FOR GRADING:

A Exceptional Progress
B Commendable Progress
C Fair Progress
D Minimum Progress
F Failure

DESIRABLE HABITS AND ATTITUDES:

Effort	B	B	B	B	B	B
Self Control	B	B	B	B	B	B
Accepts and Fulfills Responsibilities	B	B	B	B	B	B
Is Careful In Use of Materials	B	B	B	B	B	B
Work Habits	B	B	O	B	B	B
Follows Directions	B	B	B	B	B	B

CREATIVE AND APPRECIATIVE ACTIVITIES:

Participation in Art Activities	C+	B	B	B	B	B
Participation in Music Activities						
Participation in Physical Education Activities						

READING:

Readiness	B	B	B	B	B	B
Understands What He Reads	B	B	B	B	B	B
Reads Well Orally	B	A	A	A	A	A
Shows Growth in Word Analysis	B	B	B	B	B	B
Reads a Variety of Material	B	B	B	B	B	B

ARITHMETIC:

Knows Number Facts on Grade Level	B	B	B	B	F	D
Works Examples on Grade Level	B	B	B	B	E	D
Solves Problems on Grade Level	B	B	B	D	B	D
Uses Careful and Correct Methods of Work	B	B	B	B	E	B

HANDWRITING	C	B	B	D	E	B

LANGUAGE:

Uses Well Selected Content	C+	B	B	B	F	B
Speaks Clearly and Correctly	C+	B	B	B		B
Uses Correct Form in Written Work	C+	B	B	B		D
Shows Growth in Vocabulary	B	B	B	B	E	B

SPELLING:

Uses Correct Spelling in Written Work	B	B	B	B	F	D
Spells Correctly Words on Spelling List	A	A	A	A		A
Uses Dictionary	B	B	B	B		B

SOCIAL STUDIES (This includes the study of Geography, History, Science and Health):

Acquires Information	B	B	B	B		D
Uses Reference Materials	C	C	B	B		D
Participates in Discussion	B	B	B	B		B
Participates in Planning and Evaluating	B	B	B	B	E	B

Parent's Signature and Comments:

1. (Mrs) J.R. Carr,
2. (Mrs) J.R. Carr
3. (Mrs) J.R. Carr
4. (Mrs) J.R. Carr
5. (Mrs) J.R. Carr
6.

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REPORT OF PUPIL PROGRESS

MONTGOMERY PUBLIC SCHOOLS

Montgomery, Alabama

Alabama State College SCHOOL

NAME Arlam Carr

GRADE 6 YEAR 19 61 19 62

TO PARENTS:

A report of your child's progress will be sent to you at the end of each six weeks.

Parents wishing to talk with teachers about their children will please call the school to arrange an appointment with the teacher. Conferences are usually held from 3 to 3:30 P.M.

You are cordially invited to visit the school at any time.

Mr. W. H. Caston PRINCIPAL

Mattie L. Pulchist TEACHER

_____ PRINCIPAL

_____ TEACHER

ASSIGNED TO 7th GRADE FOR 19 62 19 63

Pupil's Name Arlam Carr

School Ala. State College Date Entered 9/7/61

School _____ Date Entered _____

TOTAL DAYS PRESENT	27	28	30	30	30	30
TOTAL DAYS ABSENT	0	0	0	0	0	0
TOTAL DAYS TARDY	0	0	0	0	0	0

CODE FOR GRADING:
A. Excellent
B. Good
C. Fair
D. Poor
F. Failing

EFFORT	B	A	A	A	A-	A-
CONDUCT	B	A-	A-	B	B	B
ARITHMETIC	B	B	A-	A-	B	A-
LANGUAGE	B	B	A-	A	A-	A-
READING						
Readiness (First Grade)						
Oral	A	B	B	A	B	B
Understanding	B	B	A-	A-		A-
SCIENCE	B	B	B	B	B	B
SOCIAL STUDIES	B	B	B	B	B	B
SPELLING	B	A-	A	A	A	A-
WRITING	B	B	B	A	B	B
HEALTH, PHYSICAL EDUCATION	B	B	B	B		B
MUSIC	B	A-	A-	A	A	A

TEACHER'S COMMENTS: (Please date)

Parent's Signature and Comments:

1. (Mrs) J. R. Carr
2. Mrs J. R. Carr
3. Mrs J. R. Carr
4. (Mrs) J. R. Carr
5. (Mrs) J. R. Carr
6.

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ALABAMA STATE COLLEGE LABORATORY HIGH SCHOOL
ACADEMIC REPORT

7th GRADE

This is a report of the work done by: Carr, Arlam

Course	1st. 9 Wks.	1st. Sem.	Pts.	3rd. 9 Wks.	2nd. Sem.	Pts.
1. Music	A	A		A	A	
2. Art	A-	A		C	B-	
3. Lib. Orien	C	B		B	B	
4. Phy. Ed.	B	C		B	B	
5. English	C	C		B	B+	
6. Math	B	B		C	C+	
Spare	C	C		C	C+	
S. Studies	B	B		B	A	

A = 15 Points
B = 10 Points
C = 5 Points
D = 0 Points
F = -5 Points repeat
I = Incomplete

Points Computed 1st. and 2nd. Semester

This is to certify that I have seen this Report:

Signature Mrs. Arlam Carr
1st 9 Weeks Mrs. Arlam Carr
1st Semester Mrs. Arlam Carr
3rd 9 Weeks Mrs. Arlam Carr
2nd Semester
Home Room Teacher Mrs. Phillips
Principal W. H. Councill

This report comes to you four times during the school year. Each time it is received please examine it carefully, sign, and return it promptly.

Encourage your child by commendation for good marks. Growth in the categories listed on the progress report will result in good marks.

Feel free to consult Teacher and Principal at school about the work of your child.

CERTIFICATE OF PROMOTION

This is to certify that the Pupil named above has completed the work as outlined for 7th grade and is hereby promoted to the 8th grade.

_____ Principal

Given this _____ day of _____, 19____

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ALABAMA STATE COLLEGE LABORATORY HIGH SCHOOL
ACADEMIC REPORT

8th GRADE

This is a report of the work done by: Carr, Arlam Jr.

Course	1st. 9 Wks.	1st. Sem.	Pts.	3rd. 9 Wks.	2nd. Sem.	Pts.
1. Art		B	10	B+	A	—
2. Music	A	A	10	B-	A	—
3. Science	C	C+	5	C	C	5
4. Math	A	B	15	B+	A	15
5. English	C+	A-	15	A	B	10
6. Geography	C+	C+	5	B	B	10
Phy. ED.	B	B+	10	B	A	—
L. O.	B	B	10	C	B	—
			70			40

A = 15 Points
B = 10 Points
C = 5 Points
D = 0 Points
F = -5 Points repeat
I = Incomplete

Points Computed 1st. and 2nd. Semester

This is to certify that I have seen this Report:

Signature Mrs Johnnie R Carr
1st 9 Weeks Mrs Johnnie R Carr
1st Semester Mrs Johnnie R Carr
3rd 9 Weeks Mrs Johnnie R Carr
2nd Semester

Home Room Teacher Mrs. Brown
Principal Dr. A. A. Robinson

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This report comes to you four times during the school year. Each time it is received please examine it carefully, sign, and return it promptly.

Encourage your child by commendation for good marks. Growth in the categories listed on the progress report will result in good marks.

Feel free to consult Teacher and Principal at school about the work of your child.

CERTIFICATE OF PROMOTION

This is to certify that the Pupil named above has completed the work as outlined for 8th grade and is hereby promoted to the 9th grade.

Dr. J. K. Robinson Principal

Given this 29th day of May, 1964

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Answer to Interrogatories

(Filed June 10, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Pursuant to interrogatories propounded by the defendant, Montgomery County Board of Education, Bishop S. Thompson, one of the parents and next friends of James G. Thompson, makes the following answers to the interrogatories under oath, and as answer to said interrogatories saith as follows:

1. (a) My name is Bishop S. Thompson, the minor plaintiff James G. Thompson, was born December 1, 1947 and resides at 664 Elmwood Street, Montgomery, Alabama.

(b) His parents, Bishop S. Thompson and Lois E. Thompson.

(c) Same as (b) above.

2. Two years.

3. Yes.

4. (a) Alabama State Laboratory High School.

(b) 915 South Jackson.

(c) Tenth.

5. Not applicable.

6. One.

7. Alabama State Laboratory High School.

8. 664 Elmwood Street, Montgomery, Alabama.

9. No.

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10. Not applicable.

11. No.

12. Not applicable.

13. Report Cards are not available at this time but will be made available, if necessary at a later date.

14. No.

15. No.

16. No.

17. I am desirous of obtaining all the relief prayed for in my complaint heretofore filed in this Court.

18. See 17 above.

19. Alabama State Laboratory High School.

20. Yes.

21. Proper arrangements have been made with my attorney so that he may properly represent me in this case.

22. My attorney made certain requests on my behalf to the Montgomery County Board of Education, a copy of the requests are attached to and made a part of the complaint.

23. The "dual attendance areas" refer to geographical lines drawn whereby white students attend certain schools and Negro students attend certain schools.

24. See 22 above.

25. Eleventh.

26. Alabama State Laboratory High School.

27. (a) No.

(b) Not applicable.

(c) Not applicable.

28. I have not sought any relief under the Alabama School Placement Law.

29. No.

BISHOP S. THOMPSON

(Sworn to June 9, 1964)

Certificate of Service (omitted in printing)

Answer to Interrogatories

(Filed June 10, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Pursuant to interrogatories propounded by the defendant, Montgomery County Board of Education, Bishop S. Thompson, one of the parents and next friends of John W. Thompson, makes the following answers to the interrogatories under oath, and as answer to said interrogatories saith as follows:

1. (a) My name is Bishop S. Thompson, the minor plaintiff, John W. Thompson was born November 30, 1956 and resides at 664 Elmwood Street, Montgomery, Alabama.

(b) His parents, Bishop S. Thompson and Lois E. Thompson.

(c) Same as (b) above.

2. Two years.

3. Yes.

4. Mc David Elementary School.

(b) Hardaway Street.

(c) First.

5. Not applicable.

6. None.

7. Not applicable.

8. Not applicable.

9. No.

10. Not applicable.

11. No.

12. Not applicable.

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13. Report cards are not available at this time but will be made available if necessary at a later date.

14. No.

15. No.

16. No.

17. I am desirous of obtaining all the relief prayed for in my complaint heretofore filed in this Court.

18. See 17 above.

19. McDavid Elementary School.

20. Yes.

21. Proper arrangements have been made with my attorney so that he may properly represent me in this case.

22. My attorney made certain requests on my behalf to the Montgomery County Board of Education, a copy of the requests are attached to and made a part of the Complaint.

23. The "dual attendance areas" refer to geographical lines drawn whereby white students attend certain schools and Negro students attend certain schools.

24. See 22 above.

25. Second.

26. Alabama State Laboratory High School.

27. (a) No.

(b) Not applicable.

(c) Not applicable.

28. I have not sought any relief under the Alabama School Placement Law.

29. No.

BISHOP S. THOMPSON

(Sworn to June 9, 1964)

Certificate of Service (omitted in printing)

Answer to Interrogatories

(Filed June 10, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Pursuant to interrogatories propounded by the defendant, Montgomery County Board of Education, Bishop S. Thompson, one of the parents and next friends of Phillip L. Thompson, makes the following answers to the interrogatories under oath, and as answer to said interrogatories saith as follows:

1. (a). My name is Bishop S. Thompson, the minor plaintiff was born December 7, 1949 and resides at 664 Elmwood Street, Montgomery, Alabama.

(b) His parents, Bishop S. Thompson and Lois E. Thompson.

(c) Same as (b) above.

2. Two years.

3. Yes.

4. (a) Booker T. Washington Junior High School.

(b) 517 South Union Street, Montgomery, Alabama.

(c) Eighth.

5. Not applicable.

6. One.

7. Booker T. Washington Junior High School.

8. 664 Elmwood Street, Montgomery, Alabama.

9. No.

10. Not applicable.

11. No.

12. Not applicable.

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13. Reports cards are not available, but will be made available if necessary at a later date.

14. No.

15. No.

16. No.

17. I am desirous of obtaining all the relief prayed for in my complaint heretofore filed in this Court.

18. See 17 above.

19. Booker T. Washington Junior High School.

20. Yes.

21. Proper arrangements have been made with my attorney so that he may properly represent me in this case.

22. My attorney made certain requests on my behalf to the Montgomery County Board of Education, a copy of the requests are attached to and made a part of the complaint.

23. The "dual attendance areas" refer to geographical lines drawn whereby white students attend certain schools and Negro students attend certain schools.

24. See 22 above.

25. Ninth.

26. Alabama State Laboratory High School.

27. (a) No.

(b) Not applicable.

(c) Not applicable.

28. I have not sought any relief under the Alabama School Placement Law.

29. No.

BISHOP S. THOMPSON

(Sworn to June 9, 1964)

Certificate of Service (omitted in printing)

Answer to Interrogatories

(Filed June 10, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Pursuant to interrogatories propounded by the defendant, Montgomery County Board of Education, Bishop S. Thompson, one of the parents and next friends of Bathsheba L. Thompson, makes the following answers to the interrogatories under oath, and as answer to said interrogatories saith as follows:

1. (a) My name is Bishop S. Thompson, the minor plaintiff was born July 24, 1958 and resides at 664 Elmwood Street, Montgomery, Alabama.

(b) Her parents, Bishop S. Thompson and Lois E. Thompson.

(c) Same as (b) above.

2. Two years.

3. No.

4. Not applicable.

5. (a) None.

(b) Not applicable.

(c) Not applicable.

6. None.

7. None.

8. Not applicable.

9. Not applicable.

10. Not applicable.

11. Not applicable.

12. Not applicable.

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13. Not applicable.

14. Not applicable.

15. Not applicable.

16. Not applicable.

17. I am desirous of obtaining all the relief prayed for in my complaint heretofore filed in this Court.

18. Not applicable.

19. Not applicable.

20. Yes.

21. Proper arrangements have been made with my attorney so that he may properly represent me in this case.

22. My attorney made certain requests on my behalf to the Montgomery County Board of Education, a copy of the requests are attached to and made a part of the complaint.

23. The "dual attendance areas" refer to geographical lines drawn whereby white students attend certain schools and Negro students attend certain schools.

24. See 22 above.

25. Not applicable.

26. Alabama State Laboratory High School.

27. (a) No.

(b) Not applicable.

(c) Not applicable.

28. I have not sought any relief under the Alabama School Placement Law.

29. No.

BISHOP S. THOMPSON

(Sworn to June 9, 1964.)

Certificate of Service (omitted in printing).

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Order Denying Motion to Dismiss

(Filed June 30, 1964.)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

This cause is now submitted upon the motion to dismiss filed herein on May 30, 1964, by the defendants. Upon consideration of said motion and each ground set out therein, it is the ORDER, JUDGMENT and DECREE of this Court that said motion be and the same is hereby denied.

It is further ORDERED that this cause be set for a hearing on the plaintiffs' motion for a preliminary injunction commencing at 9:30 a.m., July 29, 1964.

Done, this the 30th day of June, 1964.

FRANK M. JOHNSON, JR.
United States District Judge

Answer to the Complaint

(Filed July 8, 1964.)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Defendants, Montgomery County Board of Education, Harold M. Harris, Fred Bear, Dr. H. P. Dawson, George A. Dozier, Dr. W. E. Goodwin, Isabelle B. Thomasson and Dr. Robert Parker and Walter McKee, file the following answer to the complaint. The paragraph numbers correspond to the paragraph numbers in the complaint.

I

The Defendants deny that the averments of the complaint state sufficient facts to invoke the jurisdiction of this Court under either 28 U.S.C., Section 1343(3), or 42 U.S.C., Section 1893 as alleged.

II

The alleged purposes of the complaint are admitted but the Defendants say that the complaint does not set forth any facts upon which the relief sought can be granted.

Defendants deny the right of each Plaintiff to maintain this suit or to any relief prayed.

III

The Defendants have no sufficient personal knowledge as to the facts averred in this paragraph and demand strict proof.

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IV

The Defendants have no sufficient personal knowledge as to the facts averred in this paragraph and demand strict proof.

V

The averments of this paragraph are denied except that it is admitted Harold M. Harris, Fred Bear, Dr. H. P. Dawson, George A. Dozier, Dr. W. E. Goodwin, Mrs. Isabelle B. Thomasson and Dr. Robert Parker are members of the Montgomery County Board of Education and Walter McKee is Superintendent of Education of Montgomery County, Alabama.

VI

Defendants deny the averments of the first sentence of paragraph VI of the complaint. Defendants admit they are operating schools which have been in the past and are now attended by members of the white race and negro race separately. They deny that the operation of separate schools for whites and negroes is under "color of the laws of Alabama." The schools are operated pursuant to the law and in such a fashion as to promote and carry out the purpose of the education of the individual children involved and in accordance with the choice and preference of the great majority of the parents, pupils and citizens of both races.

Except as above stated, the averments of facts in this paragraph are denied.

VII

The Defendants are without knowledge of any written request on behalf of these Plaintiffs and deny that any request on behalf of any of these Plaintiffs or on behalf of any individual child or parent of the class they purport to represent has been made to the Defendants in accordance with the laws of Alabama and the rules and regulations of the Board. The written communication, dated April 22, 1964, attached to the complaint, marked Exhibit "A" is not legally cognizable by the Board.

All other facts alleged in paragraph VII of the complaint are denied.

VIII

The Defendants deny the averments of paragraph VIII of the complaint.

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IX

The Defendants admit that the Plaintiffs have failed and refused to exercise their administrative and judicial remedies provided by the laws of Alabama.

All other facts alleged in paragraph IX of the complaint are denied.

X

The Defendants deny the averments of paragraph X.

XI

The Defendants deny the averments of paragraph XI.

XII

The Defendants, separately and severally having answered the complaint and each and every paragraph thereof; the Defendants as a further defense offer the following:

That no negro pupil or child or parent or guardian of a negro child or pupil has ever applied to the Defendants under the Alabama Pupil Placement Law, Act No. 367, General and Local Acts of Alabama 1957, Page 482, for admission to a school attended by white children; that both the negro race and white race, including pupils and teachers, have voluntarily maintained their attendance in schools of their respective race in Montgomery County, Alabama; that under these facts the Defendants are under no duty or burden to integrate the schools system.

HILL, ROBISON AND BELSER
Attorneys for Defendants

Certificate of Service (omitted in printing).

Request for Admission Under Rule 36

(Filed July 9, 1964.)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Plaintiffs request Defendants within ten days after service of this request to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be imposed at the trial that each of the following statements are true.

1. The Defendants for some time have pursued and are now pursuing a policy, practice, custom, or usage of operating a dual school system of education in Montgomery County, Alabama, based on race and color.

2. There is no Public School in Montgomery County, Alabama, which is attended both by children commonly designated as "White" and by children commonly designated as "Negro".

3. There is no Public School in Montgomery County, Alabama, which is attended by "White" children and which is staffed in whole or in part by "Negro" principals, teachers, or other professional personnel.

4. There is no Public School in Montgomery County, Alabama, which is attended by "Negro" children and which

is staffed in whole or in part by "White" principals, teachers, or other professional personnel.

5. The assignments of students to Public Schools of Montgomery County, Alabama, are made on the basis of race or color, or on the basis of "zones", which zones in turn are drawn on the basis of race and color.

6. The assignments of principals, teachers, and other professional personnel to the Public Schools of Montgomery County, Alabama, are made on the basis of race and color.

7. The "feeder" system, by which students are advanced from elementary schools to high schools, as employed by the Defendants in the Public Schools of Montgomery County, Alabama, is based on distinctions of race and color.

8. A "Negro" child, initially assigned to an elementary school with other "Negro" children, is thereafter, in each and every such case, assigned to a high school which is comprised only of "Negro" children.

9. Considerations of race and color have figured prominently in the disbursement of school funds for maintenance, operation and construction, in Montgomery County, Alabama.

10. Construction of schools in Montgomery County, Alabama, has been planned with the intention of preserving the racial separateness heretofore enumerated.

11. Extra-curricular activities of an intra and inter-mural sort have been limited to participation by children designated either as "White" or as "Negro", separately and exclusively.

12. A "White" child, initially assigned to an elementary school with other "White" children, is thereafter, in each and every such case, assigned to a high school which is comprised only of "White" children.

FRED D. GRAY
Attorney for Plaintiffs

Certificate of Service (omitted in printing).

Motion for Production of Documents for Inspection and Copying

(Filed July 9, 1964.)

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Come now the Plaintiffs, by and through their Attorneys of Record and move this Honorable Court for an Order requiring the defendants to produce and to permit plaintiffs to inspect and to copy each of the following documents:

(1) Minutes of all meetings of the Montgomery County Board of Education from January 1, 1954 to date.

(2) Copies of all Annual Reports and any and all other documents compiled by the Montgomery County Board of Education and sent to the Alabama State Board of Education for each year from 1954 to date.

(3) Copies or samples of all forms and like papers supplied by the Alabama State Board of Education to the Montgomery County Board of Education to facilitate reports and the supply of information to the State Board.

(4) Copies of all maps and other descriptions, verbal and diagramatic, showing the school districts and "feeder" plans for access to the Junior High and High Schools, throughout Montgomery County, Alabama, from 1954 to date.

(5) All records involving the kind and cost of school construction throughout Montgomery County, Alabama, since 1954.

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(6) All attendance records of schools operated by the Montgomery County Board of Education from 1954 to the present.

(7) All school bus and other school transportation records of the Montgomery County Board of Education from 1954 to the present.

(8) All records involving intra-county school transfers of students in Montgomery County, Alabama, from 1954 to the present.

(9) All other documents connected with the administration and operation of the schools of Montgomery County, Alabama since 1954, on which there appear designations of race or color.

Defendants have the possession, custody or control of each of the foregoing documents. Each of these documents constitute or contains evidence relevant and material to a matter involved in this action, as is more fully shown in the Affidavit hereto attached.

Respectfully submitted,

FRED D. GRAY
Attorney for Plaintiffs

STATE OF ALABAMA)
COUNTY OF MONTGOMERY)

AFFIDAVIT IN SUPPORT OF MOTION

Fred D. Gray, being first duly sworn says:

1. That defendants Harold M. Harris, Fred Bear, Dr. H. P. Dawson, George A. Dozier, Dr. W. E. Goodwin, Isabelle B. Thomasson and Dr. Robert Parker, as members of the Montgomery County Board of Education, and Walter McKee, as Superintendent of Education of Montgomery County, Alabama, are charged by law with responsibility of the administration and supervision of the public schools of Montgomery County, Alabama, which responsibility involves the direction and supervision of, and participation in, the preparation, custody and control of the documents designated in the motion to which this affidavit is attached.

2. (a) The documents designated in the motion to which this affidavit is attached are germane to the subject matter of the action, that being the operation of a dual school system in Montgomery County, Alabama, based wholly on the race and color of the children attending the schools in that County.

(b) Inspection of the designated documents may abbreviate lengthy examination of witnesses at the trial.

(c) The designated documents probably constitute or contain material evidence.

FRED D. GRAY

(Sworn to July 9, 1964.)

Certificate of Service (omitted in printing).

Notice to Produce Documents and Things for Inspection and Copying

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

Hill, Robison & Belser
36 South Perry Street
Montgomery, Alabama

Hon. Ben Hardeman
U. S. District Attorney
Federal Building
Montgomery, Alabama

Please take notice that the undersigned will bring the above Motion on for hearing before the United States District Court for the Middle District of Alabama at the Post Office Building at Montgomery, Alabama, on the 13th day of July, 1964, at 3:30 o'clock in the afternoon or as soon thereafter as counsel can be heard.

FRED D. GRAY
Attorney For Plaintiffs

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Order Directing Production of Documents for Inspection and Copying

(Filed July 16, 1964.)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

This cause is now submitted upon the motion of the plaintiffs filed herein on July 9, 1964, seeking to have this Court order and direct the defendants, and each of them, to produce and permit plaintiffs to inspect and copy certain enumerated documents, including minutes of all meetings from January 1, 1954, to date, copies of all annual reports and other documents compiled by the Montgomery County Board of Education and sent to the Alabama State Board of Education from 1954 to date, copies or samples of all forms and like papers supplied by the State Board to the Montgomery Board to facilitate reports and the supply of information to the State Board, copies of maps and other descriptions showing the school districts and "feeder" plans for access to the junior high and high schools in Montgomery County from 1954 to date, records of the kind and cost of school construction in Montgomery County since 1954, attendance records of schools operated by the Montgomery Board from 1954 to date, school bus and other school transportation records from 1954 to present, records involving intracounty school transfers of students in Montgomery County from 1954 to date, and all other documents connected with the adminis-

tration and operation of the schools of Montgomery County from 1954 to date.

Upon consideration of said motion and for good cause,

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it is the ORDER, JUDGMENT and DECREE of this Court that said motion be and the same is hereby granted. The defendants, and each of them, are ORDERED and DIRECTED to produce for inspection and copying by plaintiffs and/or plaintiffs' attorneys, each of the items and documents enumerated in plaintiffs' motion, said motion having been filed herein on July 9, 1964. It is further ORDERED that said documents be produced in the office of the Superintendent of Education of Montgomery County, Alabama, for inspection and copying by plaintiffs and/or plaintiffs' attorneys.

Done, this the 16th day of July, 1964.

FRANK M. JOHNSON, JR.
United States District Judge

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Motion for Leave to File Amendment to Complaint

(Filed July 17, 1964.)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Now come the Plaintiffs and move this Court for leave to file the annexed amendment to the complaint in the above entitled action, on the ground that facts, events and circumstances so require, in that:

1. Bishop S. Thompson, Sr., an adult party Plaintiff, is a Methodist Minister whose recent transfer in that capacity has placed him and his family outside of the jurisdiction of this Court and beyond the direct effect of the administration of the public schools of Montgomery County, Alabama.

2. The persons whose names are to be added as parties Plaintiff fairly and adequately represent the interests of the class on whose behalf this action is brought. Infant and adult Plaintiffs are Negro citizens of the United States and of the State of Alabama and are presently

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residing in Montgomery County, Alabama. The minor Plaintiffs are either attending public schools in Montgomery County, Alabama—managed, controlled and operated by Defendants herein—or are eligible to attend such schools.

Respectfully submitted,

FRED D. GRAY
JACK GREENBERG
CHARLES H. JONES, JR.
Attorneys for Plaintiffs

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Order Granting Leave to File Amendment to Complaint

(Filed July 17, 1964.)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Plaintiffs having moved this Court for leave to file an Amendment to the Complaint in the above styled action and the Court having considered said Motion and the grounds therein alleged, and the Amendment thereto annexed,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion for Leave to File Amendment to Complaint be and is hereby GRANTED.

DONE this 17th day of July, 1964.

FRANK M. JOHNSON, JR.
United States District Judge

Amendment to Complaint

(Filed July 17, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Now come the Plaintiffs in the above entitled cause and amend the complaint heretofore filed as follows:

1. By striking out the names of BATHSHEBA L. THOMPSON, JOHN W. THOMPSON, JAMES G. THOMPSON, and PHILLIP L. THOMPSON, minors, by BISHOP S. THOMPSON, SR., and LOIS E. THOMPSON, their parents and next friends, as parties plaintiff.

2. By adding the names of CHARLES LEE BELL, a minor, by CHARLIE BELL and EMMA M. BELL, his parents and next friends; WILLIAM H. DAY, a minor, by HELEN B. DAY, his mother and next friend; JOSEPHINE MARTIN, a minor, by NETTIE MARTIN, her mother and next friend; JOAN MASTIN, a minor, by FRANK MASTIN and PEARLINE MASTIN, her parents and next friends; CONSTANCE SMITH, a minor by JOHNNIE SMITH and BERTHA SMITH, her parents and next friends; and MAE CAROLYN THOMAS, a minor, by LEE C. THOMAS and SOPHIA L. THOMAS, her parents and next friends, as parties plaintiff.

3. By substituting the names added for the names stricken in each and every instance where those stricken appear in the pleadings.

FRED D. GRAY
JACK GREENBERG
CHARLES H. JONES, JR.
Attorneys for Plaintiffs

Acceptance of Service (omitted in printing)

Certificate of Service (omitted in printing)

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Answer to Request for Admissions

(Filed July 17, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Now come the Defendants and in answer to the Plaintiffs' request for admissions, heretofore on the 10th day of July served in the above matter, say:

I

In response to the request that Defendants admit the truth of Statement "1." in request for admissions, Defendants do admit they are operating schools which have been in the past and are now attended by members of the white race and Negro race separately; that said schools are operated pursuant to the law in such a fashion as to promote and carry out the purpose of the education of the individual children involved and in accordance with the choice and preference of the great majority of parents, pupils and

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citizens of both races.

II

The truth of Statement "2." in request for admissions is admitted.

III

The truth of Statement "3." in request for admissions is admitted.

IV

The truth of Statement "4." in request for admissions is admitted.

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V

In response to the request that Defendants admit the truth of Statement "5." in request for admissions, Defendants say that assignments of students to the public schools of Montgomery County, Alabama, are made in accordance with the Laws of this State and said assignments are in accordance with the choice and preference of the great majority of parents, pupils and citizens of both races.

VI

In response to the request that Defendants admit the truth of Statement "6." in request for admissions, Defendants say many factors are involved in the selection and assignment of personnel for the Public School System of Montgomery County; that the decisions on assignments and employment is not made by only these Defendants and that assignments are in accordance with the choice and preference of the great majority of principals, teachers and other professional personnel.

VII

In response to the request that Defendants admit the truth of Statement "7." in request for admissions, Defendants say all public schools in Montgomery County are operated pursuant to the Laws of Alabama and in such a fashion as to promote and carry out the purpose of the education of the individual children involved and in accordance with the choice and preference of the great majority of the parents, pupils and citizens of both races.

VIII

In response to the request that Defendants admit the truth of Statement "8." in request for admissions, Defendants make the same response as in I above.

IX

The truth of Statement "9." in request for admissions is denied.

X

In response to the request that Defendants admit the truth of Statement "10." in request for admissions, Defendants say construction of schools in Montgomery County has been and is based on needs, the growth of Montgomery, best use of land, availability of finances, and parent and pupil preferences.

XI

In response to the request that Defendants admit the truth of Statement "11." in request for admissions, Defendants do admit extracurricular activities of an intra and inter mural sort have been participated in by members of the white race and Negro race separately and exclusively.

XII

In response to the request that Defendants admit the truth of Statement "12." in request for admissions, Defendants make the same response as in VIII above.

HILL, ROBISON AND BELSER
Attorneys for Defendants

(Sworn to July 17, 1964)

Certificate of Service (omitted in printing)

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Memorandum Opinion

(Filed July 31, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

This cause is now submitted upon the plaintiffs' motion for a preliminary injunction. Upon consideration of the evidence, consisting of requests for admissions and responses thereto, interrogatories and answers thereto, the deposition of the Montgomery County Superintendent of Education, Walter McKee, and the several exhibits thereto, and the oral testimony of the various witnesses, together with the several exhibits to that testimony, this Court now makes the appropriate findings of fact and conclusions of law, embodying the same in this memorandum opinion.

This is a proceeding authorized by § 1343, Title 28, U.S.C.A., and § 1983, Title 42, U.S.C.A., brought by the

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several plaintiffs, who are Negro children suing through their parents as next friends, against the Board of Education of Montgomery County, Alabama, its individual members, agents, representatives, employees, and successors in office, and against the Superintendent of Education of Montgomery County, Alabama. Plaintiffs ask this Court to enjoin the defendants and each of them from continuing the policy, practice, custom, and usage of maintaining and operating a compulsory biracial school system in Montgomery County, Alabama, and from assigning students, teachers and other school personnel on the basis of race. Upon the filing of this action on May 11, 1964, by the plain-

tiffs, for themselves and on behalf of other members of their class, this Court by formal order made and entered in this case on May 18, 1964, designated the United States of America as amicus curiae.

From the evidence in this case, this Court now finds that these plaintiffs are Negro children living and residing in various areas of Montgomery County, Alabama; that plaintiffs are authorized by law to bring and maintain this action, and that these plaintiffs represent a class within the meaning of Rule 23(a)(3) of the Federal Rules of Civil Procedure and are, therefore, authorized to sue on behalf of other members of that class since there are common questions of fact arising out of circumstances that are common to these plaintiffs and the other members of their class. *Potts* v. *Flax*, 313 F. 2d 284 (5th Cir. 1963); *Brunson* v. *Board of Trustees of School Dist. No. 1*, 311 F. 2d 107 (4th Cir. 1962), cert. den. 373 U.S. 933 (1963).

This Court further finds that these plaintiffs and the other members of their class who are similarly situated have been and are currently attending the public schools in Montgomery County, Alabama, or expect to commence attendance in said public school system during the 1964-65 school year; that the individual defendants Harold M. Harris, as Chairman, Fred Bear, Dr. H. P. Dawson, George A. Dozier, Dr. W. E. Goodwin, Isabelle B. Thomasson, and Dr. Robert Parker are the members composing the Montgomery County Board of Education, and Walter McKee is the Superintendent of Education of Montgomery County, Alabama; and that these individuals actively manage, control and operate the public school system throughout Mont-

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gomery County, Alabama. This school system, as operated, is a unified city-county system with no separate city school districts and no City Board of Education. There is only

one school district for Montgomery County, Alabama, with the County Board of Education and the Superintendent of Education of Montgomery County, Alabama, exercising complete control over the entire system. In this school system for the school year 1963-64, there were in attendance approximately 15,000 Negro children and approximately 25,000 white children. In this system the Montgomery County Board of Education owns and operates approximately 77 schools.

From the evidence in this case, this Court further specifically finds that, through policy, custom and practice, the Montgomery County Board of Education, functioning at the present time through the named individual defendants, operates a dual school system based upon race and color; that is to say, that, through this policy, practice and custom, these officials operate one set of schools to be attended exclusively by Negro students and one set of schools to be attended exclusively by white students. The evidence further reflects that the teachers are assigned according to race; Negro teachers assigned only to schools attended by Negro students and white teachers are assigned only to schools attended by white students.

This Court further finds that the students using the transportation facilities; that is, the school buses, are segregated according to race. Furthermore, transportation is furnished by the defendants for Negroes only to schools attended solely by Negro students and for white students only to schools attended solely by white students.

The several exhibits in this case reflect that, in what has been set up by these defendants as "attendance areas," particularly in the City of Montgomery, Alabama, certain such areas are designated for "colored" and others are designated for "white." From the manner in which these area

lines are drawn, there are schools designated for and solely attended by white students that are in closer proximity to the homes of Negro students than are the schools designated for the Negro students. The reverse is true with reference to white students. The assignments of students to public

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schools (elementary, junior high and high) in Montgomery County, Alabama, have been, and are presently, being made on the basis of race or color. This is being done through the use of these "attendance areas" or "district zones," which areas are, according to the maps introduced into evidence in this case, very obviously drawn on the basis of race and color. Segregation of the races is also being accomplished in this public school system through the assignment of principals, teachers and other professional personnel. The "feeder system" is used in the Montgomery County school system; this is a system by which students are advanced from elementary schools through junior high schools and on to the high schools. This "feeder system" has been set up, is based, and is presently operating on distinctions of race and color. For instance, Negro children who are initially assigned to an elementary school attended solely by other Negro children are thereafter, in each and every instance as reflected by the evidence in this case, assigned to junior high schools and subsequently to senior high schools which are attended solely by Negro children. The reverse is true for white children. Furthermore, strong considerations of race have figured in the disbursement of school funds for maintenance, operation and construction in the Montgomery County school system. Even the substitute teachers list and attendance records reflect these distinctions based upon race.

This Court now specifically finds and concludes that, because of the designation of certain schools to be used

solely by Negro students and the designation of other schools to be used solely by white students, because of the assignment of teachers and the manner in which the teachers are assigned, because of the transportation facilities that are made available to students and the manner in which said facilities are used, and upon an abundance of other evidence as submitted in this case, some of which has been hereinabove referred to, the operation of the Montgomery County school system by these defendants is on a compulsory biracial basis. The operation of this school system on a compulsory biracial basis by these defendants is in their official capacity; thus, such an operation is action under color of the laws of the State of Alabama. The operation of the Montgomery County school

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system in such a manner is, under the law, discriminatory as to these plaintiffs and other members of their race and class who are similarly situated.

This Court specifically finds that the operation of the Montgomery County school system by and through these defendants, and the manner in which it has been and is presently being operated, is in violation of the law of the United States. *Brown* v. *Board of Education,* 347 U.S. 483 (1954); *Brown* v. *Board of Education,* 349 U.S. 294 (1955); *McNeese* v. *Board of Education,* 373 U.S. 668 (June 1963); *Goss* v. *Board of Education,* 373 U.S. 683 (June 1963); *Watson* v. *Memphis,* 373 U.S. 526 (May 1963); *Gibson* v. *Board of Public Instruction of Dade County,* 246 F. 2d 913 (5th Cir. 1957); *Gibson* v. *Board of Public Instruction, Dade County, Fla.,* 272 F. 2d 763 (5th Cir. 1959); *Holland* v. *Board of Public Instruction,* 258 F. 2d 730 (5th Cir. 1958); *Mannings* v. *Board of Public Instruction,* 277 F. 2d 370 (5th Cir. 1960); *Augustus* v. *Board of Public Instruction,* 306 F. 2d 862 (5th Cir.

1962); *Bush* v. *Orleans Parish School Board,* 308 F. 2d 491 (5th Cir. 1962); *Armstrong* v. *Board of Education of the City of Birmingham, Ala.,* 323 F. 2d 333 (5th Cir., July 1963); *Lee* v. *Macon County Board of Education,* 221 F. Supp. 297 (M.D. Ala., August 1963); *Lee* v. *Macon County Board of Education,* —— F. Supp. —— (M.D. Ala., July 1964), and *Armstrong* v. *Board of Education of the City of Birmingham, Ala.,* —— F. 2d —— (5th Cir., June 1964).

This Court further finds that, since the Supreme Court spoke in *Brown* v. *Board of Education,* supra, in 1954, the only step taken by the Montgomery County Board of Education to comply with that court decision is that "mechanics were set up" in 1956 to use the Alabama School Placement Law in the assignment of students.[1] The "mechanics" for the use of the Alabama School Placement Law as set up by the Montgomery County Board of Education have not resulted in the transfer of any Negro students to white schools or of any white students to

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Negro schools in the entire system. Thus, this Court finds the conclusion inescapable that the Montgomery County Board of Education has made and is presently making assignments and transfers of students on the basis of race notwithstanding the provisions of the Alabama School Placement Law.

The facts in this case further show that the defendant board of education in this case has not performed and is not performing its clear legal duty of taking affirmative steps to provide and operate a desegregated educational

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[1] Title 52, Chapter 4A, Code of Alabama. Also see *Shuttlesworth* v. *Birmingham Board of Education,* 162 F. Supp. 372 (N.D. Ala. 1958), aff'd. 358 U.S. 101, and this Court's opinion in *Lee* v. *Macon County Board of Education* (July 1964), supra.

system in Montgomery County, Alabama. The duty on the part of such a board in this respect, as set out in *Armstrong* v. *Board of Education of the City of Birmingham, Ala.* (July 1963), supra, is:

> "The burden of initiating desegregation does not rest on Negro children or parents or on whites, but on the School Board."

In this case, these plaintiffs are seeking the relief that was sought ten years ago by the plaintiffs in *Brown* v. *Board of Education,* supra. The evidence in this case reflects that they are entitled to that relief. That relief, generally, is to desegregate, within a reasonable time and in as orderly a manner as possible, a school system being operated in Montgomery County, Alabama, which is operated in violation of the laws of this country. The evidence in this case does not reflect any justification or basis for a continuation of this segregated school system that is continuously violating the constitutional rights of these plaintiffs and the members of their class. Accordingly, the Montgomery County Board of Education, and the individual members thereof, and Walter McKee as Superintendent of Education of Montgomery County, Alabama, will be restrained, by this Court's issuance of a preliminary injunction, from the continuation of such a system.

This Court is of the further opinion, and now concludes, that the defendants in this case should, immediately upon receipt of this order, take the necessary steps to desegregate the public schools in the Montgomery County school system to such an extent as will meet the minimum requirements specifically set forth by the Fifth Circuit Court of Appeals in *Armstrong* v. *Board of Edu-*

cation of the City of Birmingham, Ala. (June 1964), supra. In this connection, see also *Calhoun* v. *Latimer*, —— U.S. —— (May 1964) and *Griffin* v. *County School Board of Prince Edward County*, —— U.S. —— (May 1964).

This means that, commencing with the opening of the schools in the Montgomery County school system in September 1964, the first, tenth, eleventh, and twelfth grades must be desegregated. This desegregation for these grades may be through the use of the Alabama School Placement Law after the giving of timely and appropriate public notice that it will be used for this purpose throughout the entire school system in Montgomery County, Alabama, commencing in September 1964. This notice shall be by advertisement in one of the daily newspapers circulated throughout Montgomery County, Alabama, and shall be addressed to the students, parents, teachers, and other appropriate school personnel. Such notice shall be calculated to inform all concerned of their right under the plan, and said publication shall be for at least twice per week for two weeks. The acceptance of applications for transfer shall be in the office of the Montgomery County Board of Education, Montgomery, Alabama, or at some other suitable place or places publicly designated by the Board of Education; said applications for transfer to the grades specified shall be accepted from the date of the filing of this Court's opinion and order to and including August 14, 1964.

The requirements herein outlined are considered by this Court to be the minimum requirements. *Calhoun* v. *Latimer* (May 1964), supra; *Griffin* v. *County School Board of Prince Edward County* (May 1964), supra, and *Arm-*

strong v. *Board of Education of the City of Birmingham, Ala.* (June 1964), supra.

The Montgomery County Board of Education will be further ordered to file with this Court on or before January 15, 1965, its detailed plan for the operation of the Montgomery County school system commencing with the 1965-66 school year; such plan is to include and provide for the desegregation of the entire school system in Montgomery County, Alabama, within a time and in such a manner as to meet the constitutional requirements.

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This Court specifically retains jurisdiction of this cause.

Done, this the 31st day of July, 1964.

/s/ FRANK M. JOHNSON, JR.
United States District Judge

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Decree

(Filed July 31, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Pursuant to the memorandum opinion of this Court made and entered herein on this date, it is the ORDER, JUDGMENT and DECREE of this Court that the Montgomery County Board of Education, Harold M. Harris, as Chairman, and Fred Bear, Dr. H. P. Dawson, George A. Dozier, Dr. W. E. Goodwin, Isabelle B. Thomasson, and Dr. Robert Parker, as members of the Montgomery County Board of Education, and Walter McKee, as Superintendent of Education of Montgomery County, Alabama, together with their agents, servants and employees, successors in office, and all those who are or may hereafter be in active concert or participation with them, be and they are hereby enjoined, pending the disposition of this case upon its merits, from:

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(1) Operating or permitting the operation of the public schools and the public school system of Montgomery County, Alabama, on a racially segregated basis except in strict accordance with the opinions and decrees of this Court;

(2) Failing to provide public school education for the plaintiffs and other members of their class in a school

or schools that are not operated on a racially segregated basis;

(3) Failing to make an immediate start, to be effective for the school term commencing in September 1964, in the desegregation of the first, tenth, eleventh, and twelfth grades in the public schools of Montgomery County, Alabama, through the use of the Alabama School Placement Law, without discrimination on the basis of race or color, and

(4) Failing to take such additional steps in the elimination of racial discrimination in the public schools of Montgomery County, Alabama, for the 1965-66 school year as may be required by any desegregation plan approved by this Court.

It is the further ORDER, JUDGMENT and DECREE of this Court that the Montgomery County Board of Education, Harold M. Harris, Fred Bear, Dr. H. P. Dawson, George A. Dozier, Dr. W. E. Goodwin, Isabelle B. Thomasson, and Dr. Robert Parker, as members thereof, and Walter McKee, as Superintendent of Education of Montgomery County, Alabama, together with their agents, servants and employees, successors in office, and all those who are or may hereafter be acting in concert or participation with them, immediately upon receipt of this order set up the necessary and appropriate machinery for accepting and processing applications for assignment or transfer for the school year 1964-65 from applicants for the first, tenth, eleventh, and twelfth grades seeking to attend schools heretofore attended only by a race other than that of the applicants; said applications shall be taken by Montgomery County Board of Education officials up to and through Friday, August 14, 1964, and each of said applications shall be filed in the office of the Superintendent of Educa-

tion for Montgomery County, Alabama, on forms to be supplied by the office of the Superintendent of Education for Montgomery County, Alabama, upon request, to the

parents or guardians of the pupils for whom such applications are to be made.

It is the further ORDER, JUDGMENT and DECREE of this Court that the Superintendent of Education for Montgomery County, Alabama, notify the parents or guardians of the applicants for such transfers before September 1, 1964, of his action upon such applications for transfer or assignment.

It is the further ORDER, JUDGMENT and DECREE of this Court that the Superintendent of Education of Montgomery County, Alabama, shall direct publication in a daily newspaper published in the City of Montgomery, Alabama, twice each week for the weeks beginning August 2 and 9, 1964, of the following notice:

NOTICE TO PARENTS, PUPILS AND TEACHERS IN THE MONTGOMERY COUNTY PUBLIC SCHOOL SYSTEM. This notice is given pursuant to the order of the United States District Court for the Middle District of Alabama in Civil Action No. 2072-N:

You are hereby notified that, pursuant to the order of the United States District Court for the Middle District of Alabama, the Board of Education for Montgomery County, Alabama, will accept and consider applications for assignment or transfer to schools heretofore attended only by pupils of a race other than that of the applicants in the first, tenth, eleventh, and twelfth grades for the school year commencing in September 1964.

All applications for such assignments or transfers must be filed in the office of the Superintendent of Education at Montgomery, Alabama, on or before Friday, August 14, 1964.

All such applications must be filed on forms obtained from the office of the Superintendent of Education for Montgomery County, Alabama, by the parents or guardians of the pupils for whom such applications are to be made and must be completed and signed by the respective parents or guardians of such pupils.

All applications filed within the time and in the manner stated will be processed and determined without discrimination as to race of the applicants, and the parents or guardians of the applicants will be notified before September 1, 1964, of the action taken on the applications so filed.

It is further ORDERED that the Montgomery County Board of Education and the individual members thereof and the Montgomery County Superintendent of Education report to this Court in writing on or before 9:00 a.m., September 1, 1964, as to the action taken by the Montgomery

County Board of Education on each application for transfer and/or assignment pursuant to this order.

It is further ORDERED that the Montgomery County Board of Education and the individual members thereof and the Montgomery County Superintendent of Education, or their successors in office, file with this Court on or before January 15, 1965, their detailed plan for the operation of the Montgomery County school system commencing with the 1965-66 school year; such plan to be designed to eliminate segregation of students based upon

race and the complete elimination of the biracial school system within a reasonable time.

It is further ORDERED that jurisdiction of this cause be and the same is hereby specifically retained.

Done, this the 31st day of July, 1964.

FRANK M. JOHNSON, JR.
United States District Judge

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Writ of Injunction

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

To the above-named defendants and each of them:

TAKE NOTICE that you and each of you, your agents, representatives, employees, successors in office, and those who are or may hereafter be in active concert and participation with you and who shall receive notice of this order, be and you are hereby enjoined as more particularly set out in the memorandum opinion and the decree of this Court made and entered herein on this date, a copy of each of which is attached hereto.

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This writ of injunction is issued pursuant to the memorandum opinion and the decree of this Honorable Court made and filed with the Clerk of this Court on this the 31st day of July, 1964.

Done, this the 31st day of July, 1964.

R. C. DOBSON
Clerk of the United States
District Court for the
Middle District of Alabama

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Defendants' Report Dated September 1, 1964

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Now come the Defendants in the above styled cause and file the following report, all in compliance with that portion of the Decree and Order of this Court made and entered on July 31, 1964, ordering said Defendants to "report to this Court in writing on or before 9:00 A.M., September 1, 1964, as to the action taken by the Montgomery County Board of Education on each application for transfer and/or assignment pursuant to this Order":

A total of twenty-nine applications for transfer and/or assignment were received by the Board on or before 5:00 P.M., August 14, 1964. These twenty-nine applications were processed by the Board through the use of the Alabama School Placement Law, without discrimination on the basis of race or color.

All applicants are listed alphabetically with their addresses, the grade and school to which they applied, and the action taken by the Board on each application.

Name	Address	Grade and School to Which Applied	Action Taken
Bell, Charles Lee	2032 Early St.	12th grade-Lanier	Denied
Bell, Herbert	184 John Morris	1st grade-Harrison	Approved
Campbell, Alfonso	708 Davidson St.	1st grade-Goode St.	Denied
Davis, Willie Mae	2132 Council St.	10th grade-Lanier	Denied
Day, William Henry	785 Thurmond St.	12th grade-Lanier	Denied
Floyd, Alfonso	311 No. Jackson St.	10th grade-Lanier	Denied
Floyd, Charles	311 No. Jackson St.	10th grade-Lanier	Denied
Gray, Vanessa Lynn	2722 W. Edgemont	1st grade-Bellingrath	Denied
Harris, Ella Louise	180 Martin Patton	10th grade-Lanier	Denied
Lawrence, Freddie, Jr.	210 John Morrison	1st grade-Harrison	Denied
Martin, Josephine	933 So. Decatur St.	12th grade-Lanier	Denied
Martin, Shirley Ann	354 Auburn St.	12th grade-Lanier	Approved
Mastin, Joanne	726 Alexander St.	10th grade-Lanier	Denied
Miles, Wayne Edward	199 John Morris	1st grade-Harrison	Approved
Miles, Yvonne	199 John Morris	10th grade-Lanier	Denied
Persons, Syrinthia R.	1518 Yougene St.	11th grade-Lee	Denied
Riggins, Annie Joyce	1804 Fourney St.	11th grade-Lee	Approved
Riggins, Willie, Jr.	1804 Fourney St.	12th grade-Lee	Approved
Russell, Robert Earl	13B Mulzer Blvd.	11th grade-Lanier	Approved
Sanders, Jo Ann	1839 Fourney St.	1st grade-Capitol Hgts.	Denied
Sanders, Julia Mae	1839 Fourney St.	12th grade-Lee	Approved
Sanders, Susie Bell	375 Auburn St.	10th grade-Lanier	Approved
Sanders, William Berry	1838 Fourney St.	10th grade-Lee	Denied
Smith, Constance	1510 Westcott St.	11th grade-Lanier	Denied
Stovall, Zack, Jr.	128 Martin Patton	10th grade-Lanier	Denied
Thomas, Joyce Lorraine	2161 Dorothy St.	12th grade-Lanier	Denied
Thomas, Mae Carolyn	1411 Deer St.	10th grade-Lanier	Denied
Webb, Anthony R.	567 Watts St.	1st grade-Capitol Hgts.	Denied
White, Linda Diana	2344 Day St.	10th grade-Lanier	Denied

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SUBMITTED this 1st day of September, 1964.

HILL, ROBISON AND BELS
Attorneys for Defendan

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Motion for Further Relief or Order to Show Cause

(Filed September 1, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Come now the plaintiffs, by and through their attorneys of record, and represent to this Court the following:

1. That on July 31, 1964, this Court rendered a decree requiring the defendant, Montgomery County Board of Education, and the individual defendants named therein, "their agents, servants, and employees, successors in office, and all those who will or may hereafter be acting in concert or participation with them, immediately upon receipt of this order set up the necessary and appropriate machinery for accepting and processing applications for assignment or transfer for the school year 1964-1965 from applicants for the first, tenth, eleventh and twelfth grades seeking to attend schools heretofore attended only by a race other than that of the applicants; . . ."

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2. That pursuant to further directions of the Court, within the time specified in this Court's decree, the applicants named below applied for transfer or assignment to the respective grades and schools opposite their names:

To Sidney Lanier High School

Yvonne Miles	Tenth Grade
Charles Bell	Twelfth Grade
Willie Mae Davis	Tenth Grade
William H. Day	Twelfth Grade
Alfonso Floyd	Tenth Grade
Charles Floyd	Tenth Grade
Ella Louise Harris	Tenth Grade
Shirley A. Martin	Twelfth Grade
Josephine Martin	Twelfth Grade
Joan Mastin	Tenth Grade
Susie B. Sanders	Tenth Grade
Constance Y. Smith	Eleventh Grade
Zack Stovall, Jr.	Tenth Grade
Joyce L. Thomas	Twelfth Grade
Mae Carolyn Thomas	Tenth Grade
Linda D. White	Tenth Grade
Robert Russell	Eleventh Grade

To Robert E. Lee High School

Syrinthia R. Person	Eleventh Grade
Annie Joyce Riggins	Eleventh Grade
Willie Riggins, Jr.	Twelfth Grade
William B. Sanders	Tenth Grade
Julia M. Sanders	Twelfth Grade

To Bellingrath Elementary School

Vanessa Lynn Gray	First Grade

To Goode Street Elementary School

Alphonso Campbell	First Grade

To Capital Heights Elementary School

JoAnn Sanders	First Grade
Anthony R. Webb	First Grade

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To William R. Harrison Elementary School

Herbert Bell	First Grade
Freddie Lawrence	First Grade
Wayne Miles	First Grade

3. That defendant, Montgomery County Board of Education, has considered the applications of the above named pupils for transfer or assignment to the schools designated, but has rejected the applications of all except the following:

To Sidney Lanier High School

Susie Bell Sanders	Tenth Grade
Robert Russell	Eleventh Grade
Shirley Ann Martin	Twelfth Grade

To Robert E. Lee High School

Willie Riggins, Jr.	Twelfth Grade
Annie Joyce Riggins	Eleventh Grade
Julia Mae Sanders	Twelfth Grade

To Harrison Elementary School

Wayne Edward Miles	First Grade
Herbert Bell	First Grade

4. That the defendants have denied the applications for transfer of each and every plaintiff in this action.

5. That the schools to which the above named applicants sought transfer and assignment are better equipped, better staffed and have broader curriculums and in general are better schools than the colored schools which applicants have heretofore attended or will be compelled to attend.

6. In refusing to accept the applications of the other named pupils, defendants have failed to state any reason for such refusal or to elucidate any standards which form the basis for their judgment.

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7. The defendants in failing to approve the other applications seek to only have token desegregation in the public schools of Montgomery County and to circumvent this Court's decree in this case and in the case of *Brown* v. *Board of Education*, 347 U. S. 483, 98 L. Ed. 873, 74 S. Ct. 686.

8. That in processing and refusing to approve the applications for transfer and assignment, the defendants have subjected these Negro pupils to procedures and investigations which white children desiring to transfer from one white school to another are not subjected to, and to procedures and investigations which other Negro children desiring to transfer from one Negro school to another Negro school are not subjected to.

9. That in refusing to approve the applications for transfer and assignment the defendants have denied to plaintiffs and their class their constitutional right to receive an education on a nondiscriminatory basis.

10. The plain meaning of the Court's decree in the above case is that the volume of transfers within the grades indicated was to be expanded rather than constricted. This is made clear by consideration of several factors leading to this Court's judgment. First, this Court relies upon the opinions of the Supreme Court in *Griffin* v. *County School Board of Prince Edward County*, 12 L. Ed. 2d 256 (1964) and *Calhoun* v. *Latimer*, 12 L. Ed. 2d 288 (1964), which when taken together indicate that the only appropriate relief in effecting desegregation is that which is "quick and effective," and the decision of the Fifth Circuit, *Armstrong* v. *Board of Education of the City of Birmingham*, 323 F. 2d 333 (5th Cir., June 18, 1964); cf. *Glynn Co. Board of Education, et al.* v. *Lynda Sue Gipson*, —— F. 2d —— (5th Cir., June 18, 1964), which delineate the minimal requirements for compliance with the Supreme Court's mandates, and upon which the decree in the instant case is modeled. Secondly, because the decree is an apparent retreat from this Court's earlier opinion in *Lee, et al.* v. *Macon County School Board*, 221 F. Supp. 297, and its later opinion in *Harris, et al.* v. *Bullock County Board of Education*, C. A. No. 2073-N, 8/5/64, neither of which limited transfers to four grades, the strong inference is that total desegregation of the Montgomery County school system was to be effected within these grades in the school term beginning September, 1964. Clearly, the limitation upon transfers effected by the defendants' action violates both the plain meaning and the spirit of this Court's decree.

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WHEREFORE, plaintiffs pray that this Court order the applicants, namely, Yvonne Miles, Charles Bell, Willie Mae Davis, William H. Day, Alfonso Floyd, Charles Floyd,

Ella Louise Harris, Josephine Martin, Joan Mastin, Constance Y. Smith, Zack Stovall, Jr., Joyce L. Thomas, Mae Carolyn Thomas, Linda D. White, Syrinthia R. Person, William B. Sanders, Vanessa Lynn Gray, Anthony R. Webb and Freddie Lawrence to be admitted to the grades and schools listed, or in the alternative, that the defendants be made to show cause why each application for transfer should not be promptly granted.

Respectfully submitted,

FRED D. GRAY
JACK GREENBERG
CHARLES H. JONES
Attorneys for Plaintiffs

Certificate of Service (omitted in printing)

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MONTGOMERY PUBLIC SCHOOLS

MONTGOMERY, ALABAMA

REPORT OF PUPIL PROGRESS

For the Year 19 63 19 64

G. W. Carver JUNIOR HIGH SCHOOL

Sanders, Susie PUPIL

To Parents or Guardians:

This report indicates the progress in studies and in citizenship made by the pupil during each six-week period of the school year. Please discuss all phases of the report with your son or daughter.

Section 5 Teacher [illegible]

Grade 7

Assigned to Grade 10

SYSTEM OF GRADING

A. Excellent
B. Good
C. Fair
D. Poor
F. Failing

SUBJECT	Six Weeks Periods						Year Aver.
	1st	2nd	3rd	4th	5th	6th	
ALGEBRA	B	A-	B-	A-	B	B	B
ARITHMETIC							
CIVICS	B	C	B	B	A	B	B
ENGLISH	B	B	B	C	C	B	B
GEOGRAPHY							
HISTORY (AMERICAN)							
LATIN							
SCIENCE	B	B	B	A	A	A	A
ART				B	C	C	
HOME MAKING							
MANUAL ARTS							
MUSIC appreciation			C				
SPEECH							
PHYSICAL ED.	A	A					
BAND							
NO. TIMES CHECKED OUT	—						
DAYS ABSENT	0	0	1	0	0	1	2
DAYS TARDY	0	0	0	0	0	0	0

Please acknowledge your inspection of this report by signing it. Your signature does not indicate approval or disapproval of the contents of the report.

CITIZENSHIP PROGRESS

In order that the school may cooperate with the parent to develop in every student a well rounded character and the qualities of good citizenship, progress in certain social habits and attitudes should be given careful attention. Undesirable conduct outside classroom will be referred to the Principal

	EFFORT						CLASSROOM CONDUCT					
	1	2	3	4	5	6	1	2	3	4	5	6
B B	B	B	C	B	B	B	B	B	B	B	B	B
B B	B	C	B	B	A	A	B	B	B	B	B	B
A C	A	A	A	A	A	A	A	A	B	A	A	A
A A	B	B	B	B	A	A	B	B	B	A	A	A
C											A	
			B						A			

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TEACHER'S COMMENTS:

Susie made the honor roll for the 1st reporting period.

Again, Susie made the honor roll for the 2nd period.

4th Period: Susie again made the honor roll. Congratulations.
5th Period: Susie made honor roll again

PARENT'S COMMENTS:

INVITATION TO PARENTS

Parents wishing to talk with teachers about their children will please call the school for an appointment on any school day after 3:00 p.m. except Monday, which is the day set for faculty meetings. Teachers are always pleased to confer with parents.

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MONTGOMERY PUBLIC SCHOOLS

MONTGOMERY, ALABAMA

REPORT OF PUPIL PROGRESS

For the Year 19 63 19 64

GEORGE WASHINGTON CARVER SENIOR HIGH SCHOOL

THOMAS, JOYCE PUPIL

To Parents or Guardians:

This report indicates the progress in studies and in citizenship made by the pupil during each six-week period of the school year. Please discuss all phases of the report with your son or daughter.

With the first report of the year will be sent a letter explaining the system of reporting employed. You are urged to keep this letter and to refer to it at the end of each grade period.

First Semester

Section 8 Teacher Mrs. A. F. Baker

Grade 11

Second Semester

Section 8 Teacher Mrs. A. F. Baker

Grade 11

Promoted to 12th Grade
5/29/64 ASB

SCHOLASTIC PROGRESS

The scholastic advancement of the student is indicated by the five steps listed below:

A. Exceptional Progress
B. Commendable Progress
C. Fair Progress
D. Minimum Progress
F. Failure

FIRST SEMESTER	STEPS				
Subjects	First Per.	Second Per.	Third Per.	Exam. Grade	Sem. Record
English	A	A	A	B	A
American History	B	B	C	C	C
Art	B	B	A	B	B
French II	A	C	B	C	C
Physics	B	A	A	C	B
Days Absent	0	0	0		0
Times Tardy	0	0	0		0
Times Checked Out					

SECOND SEMESTER	STEPS				
Subjects	First Per.	Second Per.	Third Per.	Exam. Grade	Sem. Record
English	A	A	A	B	A
American History	B	A	C	B	B
Art	A	A	A	B	B
French II	A	A	A	B	B
Physics	A	B	A	A	A
Days Absent	0	0	0		
Times Tardy	0	0	0		
Times Checked Out					

3958023

CITIZENSHIP PROGRESS

In order that the school may cooperate with the parent to develop in every student a well rounded character and the qualities of good citizenship, progress in certain social habits and attitudes should be given careful attention.

Progress in any of the desirable traits listed below is indicated in the following manner: If no mark is placed after the trait, the student is to be considered satisfactory in that respect. If the student has shown either marked progress or decided need for improvement in any particular trait, the fact will be indicated by the same steps as those used for scholastic progress.

CITIZENSHIP CHARACTERISTICS	1st Per.	2nd Per.	3rd Per.	4th Per.	5th Per.	6th Per.
Effort						
Co-operation						
Courtesy						
Reliability						
Self-Control						
Care of public property						
General conduct						

Please note that there has been left on the last page of this report a space for further comments by teacher

SIGNATURE OF PARENT

Please acknowledge your inspection of this report by signing it. Your signature does not indicate approval or disapproval of the contents of the report.

First Semester	Second Semester
First Period	First Period
Second Period	Second Period
Third Period	Third Period

TEACHER'S COMMENTS:

(An additional sheet or separate letter will be used when necessary.)

PARENT'S COMMENTS:

INVITATION TO PARENTS

Parents wishing to talk with teachers about their children will please call the school to arrange an appointment with the teacher. Conferences are usually held from 3 to 3:30 P.M.

Name of Pupil [illegible] Teresa, Ida Carolyn Address 1411 Dean Street

Last Name	First	Middle	Present Address	Place and Date of Birth	Sex
[illegible]	[illegible]	[illegible]	1411 Dean Street	2/13/49 Montgomery	M F
[illegible]	Ida	Clarence	City, Ala.	Living: Yes / No	Citizen: Yes / No
[illegible]	Sandra	L.	Occupation		Education: Elem. / H. S. / Col.

Test Record

Date	Name of Test	Total Score	Per. Rank	Chr. Age

Attendance Record

Year	Class	Days in Session 1st Sem.	Days in Session 2nd Sem.	Days Present 1st Sem.	Days Present 2nd Sem.	Times Tardy 1st Sem.	Times Tardy 2nd Sem.

Scholastic Record

Junior High School Subjects	Year	Weeks Pursued	Minutes Per Week	Marks 1st Sem.	Marks 2nd Sem.
[illegible] Year 1961-62		36	45		
[illegible]				A	A
[illegible]				A	A
[illegible]				B	B
[illegible]				B+	B+
[illegible]				C	C
[illegible]				A	A
[illegible]				A	A
[illegible]				A	A
[illegible] Year 1962-63		36	45		
[illegible]				B+	B
[illegible]				B	B
[illegible]				A	A
[illegible]				A	A
[illegible]				A	A
[illegible]				A	A
[illegible]				A	A
[illegible]				A	A
[illegible] Year 1963-64		36	45		
[illegible]				B+	B
[illegible]				A	A
[illegible]				A	A
[illegible]				A-	B
[illegible]				A	A
[illegible]				A-	B
[illegible]				A	A
[illegible]					

High School Subjects	Year	Weeks Pursued	Minutes Per Week	Marks 1st Sem.	Marks 2nd Sem.	Credit
[illegible]						
[illegible]						
[illegible]						

(Duly 1, 1959)
Education Association, Montgomery, Ala.

CUMULATIVE RECORD AND TRANSFER BLANK

Name of Pupil

Last Name	First	Middle	Home Address	Place and Date of Birth	Sex
Smith	Constance		1520 Wescott Montgomery, Ala.	B/9/48 Montgomery	M F
Smith	Johnny		Occupation Insurance Agent	Living: Yes X, No	Citizen: Yes X, No	Education: Elem. , H. S. , Col.
Smith	Bertha		Occupation Beautician	Living: Yes X, No	Citizen: Yes X, No	Education: Elem. , H. S. , Col.

Test Record

Date Mo.	Date Yr.	Name of Test	Point Score	Per. Rank	Chr. Age	

Attendance Record

Year	Class	Days in Session 1st Sem.	Days in Session 2nd Sem.	Days Present 1st Sem.	Days Present 2nd Sem.	Times Tardy 1st Sem.	Times Tardy 2nd Sem.

Scholarship Record

JUNIOR HIGH SCHOOL SUBJECTS	Year	Weeks Pursued	Minutes Per Week	MARKS 1st Sem.	MARKS 2nd Sem.
or I Year 1960-61		36	45		
glish				A	A
cial Studies				A	A
thematics				A	A
ience				C	C
sical Education				C	C
				B	A
sic				A	A
brary Orientation				A	C
or II Year 1961-62		36	45		
glish				C	B-
ography				B-	B
thematics				B	A
ience				A-	B
sical Education					A
				A	B
sic				A	
brary Orientation				A	A
or III Year 1962-63		36	45		
glish				C	B
ience				B	B
gebra I				B	C
				B	B
sic				A	A
th I				B	B
me Economics I				B	B

SENIOR HIGH SCHOOL SUBJECTS	Year	Weeks Pursued	Minutes Per Week	MARKS 1st Sem.	MARKS 2nd Sem.	UNITS
English		36	45			
Senior I 1963-64				A-	B	1
Social Studies		36	45			
World History 1963-64				B	A	1
Science		36	45			
Biology 1963-64				B	B	1
Mathematics		36	45			
Algebra II 1963-64				B-	B	1
Foreign Language						
Vocational or other subjects		36	45			
Physical Education 1963-64				B	B	1/3

A=Excellent B=Good C=Fair D=Poor (Passing) F=Failure I=Incomplete W=Withdrawn

Graduated Number of Pupils in Graduating Class Quarter Rank in Class: Highest Second Third Lowest

of High School Ala. State College Laboratory High Address of School Montgomery, Alabama

dited by Southern Association Colleges & Secondary Schools

Registrar
Principal
Superintendent

d sent to Date 9/11/64

Address

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ME OF PUPIL Smith, Constance

Residence Record

Year	Mailing Address	Tel. No.	DISTANCE Bus	DISTANCE School
	1510 Westcott Street			

Schools Attended

NAME OF SCHOOL	Administered privately, by County, City	DATE Entered	DATE Left
Ala. State College Lab.		9/54	

Year	Class	EXTRA-CURRICULAR ACTIVITIES

OUTSIDE INTERESTS AND HOBBIES

Sewing
Cooking

Year	Class	VOCATIONAL PREFERENCE
		Scientist

HEALTH RECORD

Ht.	Wt.	Physical Defects

of other Children in Family—Older Younger Church Affiliation or Preference Nationality

ancial Status of Family—Owns Home Rents Yearly Income

PERSONALITY RATING

	JR. I					JR. II					JR. III				
	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5
olastic Zeal															
llectual Ability															
iative															
stworthiness															
dership Ability															
al Attitude															
otional Control															

	SR. I					SR. II					SR. III				
	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5
olastic Zeal															
llectual Ability															
iative															
stworthiness															
dership Ability															
al Attitude															
otional Control															

EMPLOYMENT RECORD

Year	Kind of Work	Employer	DATES From	DATES To	Wages Per

CUMULATIVE RECORD AND TRANSFER BLANK

Last Name	First	Middle	Home Address	Place and Date of Birth	Sex
Bell	Charles	L. Jr.	2032 Early Street, Montgomery, Ala.	1/14/49 Montgomery	M F
Father: Bell	Charles	L.	Occupation: Utility Salesman	Living: Yes X, No	Citizen: Yes X, No	Education: Elem. X, H. S., Col.
Mother: Bell	Zerna	M.	Occupation: Teacher	Living: Yes X, No	Citizen: Yes X, No	Education: Elem., H. S., Col. X

Name of Pupil

Address

Test Record

Date Day	Date Yr.	Name of Test	Point Score	Per. Rank	Chr. Age	Year	Class
		NAME OF PUPIL BELL CHARLES L	09	13	14	17	17
		NAME OF PUPIL BELL CHARLES L	18	24	23	22	16

Attendance Record

Days in Session 1st Sem.	Days in Session 2nd Sem.	Days Present 1st Sem.	Days Present 2nd Sem.	Times Tardy 1st Sem.	Times Tardy 2nd Sem.
12	15	56	81	80	83	51	73
21	25	91	81	77	50	79	103

Scholarship Record

JUNIOR HIGH SCHOOL SUBJECTS	Year	Weeks Pursued	Minutes Per Week	MARKS 1st Sem.	MARKS 2nd Sem.
Junior I Year 1959-60		36	45		
ish				C	B
al Studies				B	B
matics				B	A
ce				A	A
ical Education				C	B
				A	B-
e				B	A-
ary Orientation					B
ior II Year 1960-61		36	45		
ish				B	B
raphy				A-	A-
matics				A	A
ce				A	A
ical Education				B	C
				A	A
c				B	A
al Interest				S	S
ary Orientation				A	A
ior III Year 1961-62		36	45		
ish				B	A
ce				A	B
bra I				A	A
ical Education				B	
				B	A-
g				A	A
n I				B	B
orial Arts				B-	B

HIGH SCHOOL SUBJECTS	Year	Weeks Pursued	Minutes Per Week	MARKS 1st Sem.	MARKS 2nd Sem.	UNITS
English		36	45			
Senior I 1962-63				B-	B	1
Senior II 1963-64				B	B	1
Social Studies		36	45			
World History 1962-63				B	B	1
American History 1963-64				B	A	1
Science		36	45			
Biology 1962-63				A	A	1
Physics 1963-64				A	A	1
Mathematics		36	45			
Algebra II 1962-63				A	B	1
Geometry 1963-64				A	A	1
Foreign Language		36	45			
French I 1963-64				B	A	1
Vocational or other subjects		36	45			
Art 1962-63				A	A-	1/2
Physical Education 1962-63				C	B	"
Physical Education 1963-64				A	B	"

A=Excellent B=Good C=Fair D=Poor (Passing) F=Failure I=Incomplete W=Withdrawn

raduated Number of Pupils in Graduating Class Quarter Rank in Class: Highest Second Third Lowest

f High School Ala. State College Laboratory High Address of School Montgomery, Alabama

ited by Southern Association Colleges & Secondary Schools

Registrar
Principal
Superintendent

sent to

Date 9/1/63

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ME OF PUPIL

Residence Record					Schools Attended			
Year	Mailing Address	Tel. No.	DISTANCE		NAME OF SCHOOL	Administered: privately, by County, City	DATE	
			Bus	School			Entered	Left

Year	Class	EXTRA-CURRICULAR ACTIVITIES	OUTSIDE INTERESTS AND HOBBIES

Year	Class	VOCATIONAL PREFERENCE	HEALTH RECORD		
			Ht.	Wt.	Physical Defects

of other Children in Family—Older Younger Church Affiliation or Preference Nationality

ancial Status of Family—Owns Home Rents Yearly Income

PERSONALITY RATING

	JR. I					JR. II					JR. III				
	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5
olastic Zeal															
llectual Ability															
ative															
stworthiness															
ership Ability															
al Attitude															
otional Control															

	SR. I					SR. II					SR. III				
	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5
olastic Zeal															
llectual Ability															
lative															
stworthiness															
lership Ability															
al Attitude															
otional Control															

EMPLOYMENT RECORD

Year	Kind of Work	Employer	DATES		Wages Per—
			From	To	

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Order

(Filed September 1, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Pursuant to the order and decree of this Court made and entered in this case on the 31st day of July, 1964, the Montgomery County Board of Education has reported to this Court in writing concerning the action taken by that Board on each application for transfer and/or assignment made by the parents or guardians of Negro students. This report, as now filed, reflects that a total of 29 applications for transfer and/or assignment were received by the Board during the time ordered by this Court; that the 29 applications were processed by the Board through the use of the Alabama School Placement Law, and that of the 29, 21 of such applications were denied and 8 were granted. The report to this Court, as filed by the Board, does not set out any reasons to support the denial of any of the applications for transfer and/or assignment.

The plaintiffs, by and through their attorneys of record, file with this Court on this date their written objections to the action of the Montgomery County Board of Education in denying the applications for transfer and/or assignment as filed with the Board by 21 parents or guardians of Negro children who, by their applications, requested assignment or transfer to schools heretofore attended only by pupils of the white race. Plaintiffs, further, by their written motion filed on this date, move this Court to order

the defendant Montgomery County Board of Education to show cause why each application for transfer that was made to and denied by said Board should not be granted.

Upon consideration of the motion of the plaintiffs and upon consideration of the written report filed by the Montgomery County Board of Education with this Court on this date, this Court notes that the defendant Board has failed to state any reasons for its refusal to grant the applications for transfer and/or assignment of 21 of the Negro applicants and that said Board has failed to advise this Court concerning any standards or criteria which form the bases for its judgment in each instance where the application for transfer and assignment was denied. This Court is of the opinion that the Montgomery County Board of Education should within a reasonable time file with this Court in writing its reasons for refusing to grant the application for transfer and/or assignment of Charles Lee Bell, Alfonso Campbell, Willie Mae Davis, William Henry Day, Alfonso Floyd, Charles Floyd, Vanessa Lynn Gray, Ella Louise Harris, Freddie Lawrence, Jr., Josephine Martin, Joanne Mastin, Yvonne Miles, Syrinthia R. Persons, Jo Ann Sanders, William Berry Sanders, Constance Smith, Zack Stovall, Jr., Joyce Lorraine Thomas, Mae Carolyn Thomas, Anthony R. Webb, and Linda Diana White, and, further, advise this Court in writing concerning the standards and criteria which form the bases for the Board's denial of each of said applications. The attorneys for the Board of Education advise this Court that it will be convenient for them to file with this Court by 3 p.m. on this date the reasons for the Board's refusal of each of said applications and the standards and criteria which form the bases for its action in each instance.

In consideration of the foregoing and for good cause, it is the ORDER, JUDGMENT and DECREE of this Court that the motion of the plaintiffs filed herein on this date, seeking to have this Court order the transfer and/or assignment of certain Negro students based on applications filed by their parents and/or guardians with the Montgomery County Board of Education, pursuant to the order and decree of this Court of July 31, 1964, be and the same is hereby reserved.

It is the further ORDER, JUDGMENT and DECREE of this Court that the Montgomery County Board of Education file with this Court on or before 3 p.m. on this date its reasons for refusing to grant the applications for transfer and/or assignment of Charles Lee Bell, Alfonso Campbell, Willie Mae Davis, William Henry Day, Alfonso Floyd, Charles Floyd, Vanessa Lynn Gray, Ella Louise Harris, Freddie Lawrence, Jr., Josephine Martin, Joanne Mastin, Yvonne Miles, Syrinthia R. Persons, Jo Ann Sanders, William Berry Sanders, Constance Smith, Zack Stovall, Jr.,

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Joyce Lorraine Thomas, Mae Carolyn Thomas, Anthony R. Webb, and Linda Diana White, and to advise this Court as to the standards and criteria which form the bases for their action as reflected in the report of the Board filed with this Court on this date.

Done, this the 1st day of September, 1964.

FRANK M. JOHNSON, JR.
United States District Judge

Defendants' Report

(Filed September 1, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

The Plaintiffs having filed this 1st day of September, 1964, a Motion for Further Relief or Order to Show Cause and this Court having passed on said motion, the Defendants in compliance with the Order of this Court make the following report:

A total of twenty-nine applications for transfer and/or assignment were received by the Board on or before 5:00 P. M., August 14, 1964. These twenty-nine applications were processed by the Board through the use of the Alabama School Placement Law, without discrimination on the basis of race or color.

Attorneys for Plaintiffs have informed the Court and attorneys for Defendants that the applicants, Alfonso Campbell and Jo Ann Sanders have withdrawn their applications and Defendants make no report on these applicants.

All other applicants are listed alphabetically with pertinent information considered by the Defendants in making their decision and the action taken by the Defendants.

1. Charles Lee Bell, 2032 Early Street, Montgomery, Alabama.

The applicant attended Alabama State Laboratory School last year, completing the eleventh grade and applied to attend Lanier High School, requesting admission to the twelfth grade.

Applicant lives approximately eight blocks from Carver High School and approximately seventeen blocks from Lanier. The route to Lanier crosses several busy thoroughfares; whereas a tunnel is provided at Fairview Avenue for the most hazardous street crossing between Early Street and Carver High School.

Lanier High School will be the most overcrowded High School in the County this year as approximately 2,700 pupils are anticipated and the normal capacity at Lanier is approximately 2,000. All regular rooms at Lanier High School will be used each period of the

day and approximately fourteen makeshift rooms have been created at Lanier. These likewise will be in full use.

Lanier will have a higher pupil-teacher ratio than will Carver High School.

The Defendants denied the application of Charles Lee Bell to attend Lanier High School.

2. Herbert Bell, 184 John Morris Avenue, Montgomery, Alabama.

This applicant applied for admission to Harrison Elementary School and brought with his application his birth certificate which shows that he meets the age requirements.

The applicant lives about the same distance from Abraham's Vineyard School as Harrison Elementary School.

The pupil-teacher ratio and available space at Harrison School would not be adversely affected.

The parent and pupil have expressed a preference to attend Harrison Elementary School.

This applicant is admitted to the first grade at Harrison School.

3. Willie Mae Davis, 2132 Council Street, Montgomery, Alabama.

This applicant attended Carver Junior High School last year in the ninth grade. The applicant applied to attend Lanier High School in the tenth grade.

The applicant lives approximately four blocks from Carver High School and approximately twenty-one blocks from Lanier High School.

According to the applicant's score on the California Mental Maturity and Achievement Tests, given all eighth grade students in Alabama, the applicant showed to be about two grades retarded in both achievement and mental ability.

The Defendants considered as additional factors, the overcrowded conditions at Lanier and comparative teacher-pupil ratio, all as more particularly stated in Paragraph "1" above.

The Defendants denied this application.

4. William Henry Day, 785 Thurmond Street, Montgomery, Alabama.

This applicant attended Booker Washington High School last year in the eleventh grade. Applicant ap-

plied to attend Sidney Lanier High School this year in the twelfth grade.

The applicant resides approximately three blocks from Booker Washington High School and approximately fourteen blocks from Lanier High School. The route to Lanier will be more hazardous than the route to Booker Washington High School.

The capacity of Booker Washington High School has been increased by the addition of nine new rooms which will be ready by the opening of school this year.

Lanier High School will be the most overcrowded high school in the County this year with approximately 2,700 pupils attending and the normal capacity of Lanier High School is approximately 2,000. Lanier will have a higher pupil-teacher ratio than will Booker Washington. All regular rooms will be in use, each period of the day along with approximately fourteen makeshift rooms.

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The Defendants denied this application.

5. Alfonso Floyd, 311 North Jackson Street, Montgomery, Alabama.

This applicant attended Houston Hill Junior High School last year in the ninth grade and applied to attend Lanier High School this year in the tenth grade.

This applicant lives approximately eleven blocks from Booker Washington High School and approximately twenty-nine blocks from Lanier High School. The route to Lanier will be more hazardous than the route to Booker Washington.

Lanier High School will be the most overcrowded high school in the County this year with approximately 2,700 pupils attending and the normal capacity of Lanier High School is approximately 2,000. Lanier will have a higher pupil-teacher ratio than will Booker Washington. All regular rooms will be in use, each period of the day along with approximately fourteen makeshift rooms.

The capacity at Booker Washington High School has been greatly increased this year because of an addition of nine rooms which will be ready for the opening of school.

According to this applicant's score on the California Mental Maturity and Achievement Tests given all eighth grade students in Alabama, the applicant is about one grade retarded in mental ability and three grades retarded in achievement.

The Defendants denied this application.

6. Charles Floyd, 311 North Jackson Street, Montgomery, Alabama:

This applicant attended Houston Hill Junior High School last year in the ninth grade and has applied to attend Lanier High School this year in the tenth grade.

This applicant resides approximately eleven blocks from Booker Washington High School and approximately twenty-nine blocks from Lanier High School. The route to Lanier High School crosses several busy thoroughfares and is much more hazardous than the route to Booker Washington High School.

This applicant has an approximate "D" average and had to make up his math in summer school last summer. According to the California Mental Maturity and Achievement Tests given all eighth grade students in Alabama, the applicant shows to be three grades retarded in both achievement and mental ability.

The Defendants considered as additional factors overcrowded conditions at Lanier, additional rooms at Booker Washington High School and comparative teacher-pupil ratio as more particularly shown in Paragraph "5" above.

The Defendants denied this application.

7. Vanessa Lynn Gray, 2722 W. Edgemont Avenue, Montgomery, Alabama.

This applicant applied for admission to the first grade at Bellingrath School.

The applicant resides in the area designated to attend Carver Elementary School. No children living in the vicinity of this applicant attend Bellingrath School.

The applicant lives approximately eight blocks from Carver Elementary School. Because of the fact that W. Edgemont Avenue is not open between the Atlantic Coast Line Railroad and the east side of Genetta

Ditch, it would be approximately twenty-four blocks to Bellingrath. It would be necessary that this pupil travel down Fairview Avenue to Court Street and down Court Street to Bellingrath School.

There will be only one section of the first grade in Bellingrath School while three or four sections for the first grade are scheduled at Carver Elementary

School. The pupil-teacher ratio will be lower at Carver Elementary School than at Bellingrath School.

The Defendants denied this application.

8. Ella Louise Harris, 180 Martin Patton, Montgomery, Alabama.

This applicant attended Hayneville Road Junior High School last year in the ninth grade and made application to attend Lanier High School this year in the tenth grade.

This applicant has a very poor attendance record. The applicant attended Carver Elementary School in 1961-62 and she did not attend school in 1962-63. In the 1963-64 session her attendance was rather poor at Hayneville Road Junior High School.

All Alabama students are given in the eighth grade the Mental Maturity and Achievement Tests. For some reason, this applicant had not taken these tests.

On August 18, 1964, a letter was sent to her father, Mose Harris at 180 Martin Patton, Montgomery, Alabama. Said letter was delivered to Mose Harris by the Attendance Supervisor at 5:31 P. M., on August 18. The letter stated that those students who had failed to take the tests mentioned above would be given an opportunity to take them at 8:45 A. M. on Thursday, August 20. The applicant failed to appear for the tests on Thursday, August 20, but did report on August 21, when the second half of the test was given. A make-up for this applicant was given on August 24, and her I.Q. according to the California Test was 65 and her average achievement was one grade retarded. The applicant's excuse for not reporting on Thursday,

August 20, was, "My father said I wouldn't be able to come Thursday and told me to come Friday".

The home environment of this applicant is considered a factor. According to school personnel the applicant was involved in a shooting last year and was hospitalized for eight days. Apparently neither she nor her family made any report of this incident to the police department of the City of Montgomery.

The Defendants considered the fact that Lanier High School would be the most overcrowded high school in the County this year and that the teacher-pupil ratio at Lanier High School is much higher than the pupil-teacher ratio at Carver High School.

The Defendants denied this application.

9. Freddie Lawrence, Jr., 210 John Morris Avenue, Montgomery, Alabama.

This applicant applied to attend the first grade at Harrison Elementary School this year.

The father of this applicant stated that the applicant would be six years old on September 26, 1964. The father of the applicant was told verbally and it was printed on the application, that birth certificates must accompany the completed applications for pupils applying to enter the first grade. This applicant was the only applicant for the first grade whose parents failed to turn in the birth certificate with the application. All pupils entering the first grade must present a birth certificate showing that they will be six on or

before October 2, in order that they may enter school. This applicant has failed to meet this requirement.

The Defendants denied this application.

10. Josephine Martin, 933 South Decatur Street (Paterson Court) Montgomery, Alabama.

This applicant attended Booker Washington High School last year, in the eleventh grade and applied to attend Sidney Lanier High School this year in the twelfth grade.

This applicant resides approximately two blocks from Booker Washington High School and approximately fourteen blocks from Lanier.

The Defendants considered as additional factors, overcrowded conditions at Lanier, additional rooms at Booker Washington High School and comparative teacher-pupil ratio, all as more particularly shown in Paragraph "5" above.

The Defendants denied this application.

11. Shirley Ann Martin, 354 Auburn Street, Montgomery, Alabama.

This applicant attended Carver High School last year in the eleventh grade and applied this year to attend Sidney Lanier in the twelfth grade.

This applicant lives approximately three blocks from Lanier and approximately ten blocks from Carver High School.

Parent and pupil preference is to attend Lanier.

This applicant is accepted for the twelfth grade at Sidney Lanier High School.

12. Joanne Mast[illegible], 726 Alexander Street, Montgomery, Alabama.

This applicant attended Carver High School last year in the ninth grade and applied this year to attend Sidney Lanier High School in the tenth [illegible].

This applicant resides approximately three blocks from Carver and twelve blocks from Lanier.

According to the California Mental Maturity and Achievement Tests given this applicant and all eighth grade students in Alabama, the applicant shows to be two grades retarded in achievement and about two and a half grades retarded in mental ability.

Defendants considered as additional factors, overcrowded conditions at Lanier and comparative teacher-pupil ratio, all as more particularly stated in Paragraph "1" above.

Defendants denied this application.

13. Wayne Edward Miles, 199 John Morris Avenue, Montgomery, Alabama.

This applicant applied to attend the first grade at Harrison Elementary School.

The applicant brought his birth certificate showing that he meets the age requirements.

The applicant resides in the Abraham's Vineyard School district; however, he lives about the same distance to Harrison Elementary School.

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Parent and pupil preference is to attend Harrison School.

The Defendants approved this application.

14. Yvonne Miles, 199 John Morris Avenue, Montgomery, Alabama.

This applicant attended Hayneville Road Junior High School last year, attending the ninth grade. She is applying this year to attend Sidney Lanier High School in the tenth grade.

The applicant transferred to Hayneville Road Junior High School last year; however, this school system has been unable to get a record of her eighth grade work from New York.

The California Mental Maturity and Achievement Tests are given all eighth grade pupils in Alabama. The Defendants had no test results on this applicant and the mother of the applicant was notified by letter dated August 18, 1964, received by her at 5:13 P. M. on August 18, 1964, requesting that the applicant report on August 20 and 21, to take the test. Through August 24 at 8:45 A. M., the applicant had not reported. About noon August 24, the applicant's mother called the Attendance Supervisor of the Montgomery County School System and stated that the applicant was in New York and would not return until August 29. The applicant has not complied with the testing requirements of the Defendants.

The Defendants considered the additional factors of overcrowded conditions at Lanier and comparative teacher-pupil ratio, all as set forth more particularly in Paragraph "1" above.

The Defendants denied this application.

15. Syrinthia Reshe Persons, 1518 Yougene Street, Montgomery, Alabama.

This applicant attended St. Jude's School last year in the tenth grade and applied this year to attend Lee High School in the eleventh grade.

This applicant lives approximately ten blocks from Booker Washington High School and eighteen blocks from Lee High School. The route to Lee High School crosses several thoroughfares and would be much more

hazardous than the route to Booker Washington High School.

Lee High School is one of the more crowded schools in the County and the pupil-teacher ratio is much higher at Lee High School than at Booker Washington High School. A nine room addition has been completed at Booker Washington High School this summer and will greatly increase its capacity and reduce the pupil-teacher ratio.

On August 13, at 4:45 P. M., a woman came to the office of the Board of Education and stated she was Stella D. Person and asked for an application for Syrinthia Person, 1518 Yougene Street. This woman stated she wanted to apply for her child to attend the first grade at Capitol Heights Elementary School. On being asked the name of the father of the child she stated it was an illegitimate child and that she had never married. At 4:50 P. M., August 14, this application was returned to the Board of Education. The application number was "31". The application, when returned, showed the applicant as having attended St. Jude's School last year in the tenth grade and that the applicant wanted to attend Lee High School in the eleventh grade this year. In the opinion of the Superintendent of Education of Montgomery County who issued the initial application on August 13, and who received the application on August 14, the woman who received the application was not the same as the woman who returned the application. As authorized by the Decree of this Court and as set forth by the public notice given by the Board of Education, the parents

or guardian of the applicant was required to obtain the application. This application was obtained or returned in violation of this requirement.

The Defendants denied this application.

16. Annie Joyce Riggins, 1804 Fourney Street, Montgomery, Alabama.

This applicant attended Booker Washington High School in the tenth grade last year and applied for admission to Lee High School this year in the eleventh grade.

This applicant lives approximately sixteen blocks from Lee and approximately twenty-eight blocks from Booker Washington High School.

The parent and applicant have expressed a preference to attend Lee High School this year.

The Defendants approved this application.

17. Willie Riggins, Jr., 1804 Fourney Street, Montgomery, Alabama.

This applicant attended Booker Washington High School last year in the eleventh grade and has applied to attend Lee High School this year in the twelfth grade.

The applicant lives approximately sixteen blocks from Lee and approximately twenty-eight blocks from Booker Washington.

The parent and applicant have expressed a preference to attend Lee High School this semester.

The Defendants approved this application.

18. Robert Earl Russell, 13B Mulzer Boulevard, Montgomery, Alabama.

This applicant attended Carver High School last year in the tenth grade and applied for admission to Lanier High School this year in the eleventh grade.

This applicant resides in Maxwell Heights which is owned by the United States Government in connection with Maxwell Air Force Base. He resides in an area that is transported and the other students in this project attend Lanier High School.

The applicant and the parent have expressed a preference to attend Lanier High School this semester.

The Defendants approved this application.

19. Julia Mae Sanders, 1839 Fourney Street, Montgomery, Alabama.

This applicant attended Booker Washington High School last year in the eleventh grade and has applied to attend Lee High School this year in the twelfth grade.

The applicant resides sixteen blocks from Lee and approximately twenty-eight blocks from Booker Washington.

The applicant and the parent have expressed a preference to attend Lee High School this year.

The Defendants approved this application.

20. Susie Bell Sanders, 375 Auburn Street, Montgomery, Alabama.

This applicant attended Carver Junior High School

last year in the ninth grade and has applied to attend Lanier High School this year in the tenth grade.

The applicant lives approximately three blocks from Lanier High School and approximately ten blocks from Carver High School.

The applicant and her parents have expressed a preference to attend Lanier High School this year.

The Defendants approved this application.

21. William Berry Sanders, 1839 Fourney Street, Montgomery, Alabama.

This applicant attended Booker Washington Junior High School in the ninth grade last year and is applying to attend Lee High School this year in the tenth grade.

This applicant had a "D" average at Booker Washington last year and it was necessary for him to make up one subject in summer school. He has not completed ninth grade mathematics.

The applicant has a score on the California Mental Maturity and Achievement Tests given all eighth grade pupils in Alabama showing about two grades retarded in both achievement and mental ability.

Lee High School will be much more overcrowded this year than Booker Washington and the pupil-teacher ratio will be much lower at Booker Washington High School. Nine additional classrooms were built at Booker Washington this summer which will greatly increase the pupil capacity of this high school and reduce the teacher load.

The Defendants denied this application.

22. Constance Smith, 1510 Westcott Street, Montgomery, Alabama.

This applicant attended Alabama State Laboratory School last year in the tenth grade and has applied to

attend Lanier High School this year in the eleventh grade.

The applicant lives approximately six blocks from Carver High School and approximately eighteen blocks from Lanier High School.

The Defendants considered the additional factors of overcrowded conditions at Lanier and comparative pupil-teacher ratio, all as set forth more particularly in Paragraph "1" above.

The Defendants denied this application.

23. Zack Stovall, Jr., 128 Martin Patton, Montgomery, Alabama.

This applicant attended Houston Hill Junior School last year in the ninth grade and has applied to attend Lanier High School this year in the tenth grade.

According to the California Mental Maturity and Achievement Tests given all eighth grade students in Alabama, this applicant has an I.Q. of about 49 and is four grades retarded in achievement. On the Otis Quick Scoring Test, the applicant is shown to be at 66. According to the eighth grade records at Carver Junior High School where this applicant attended at one time, it was noted that he has failed to complete the last half of his Science and Math which he then failed.

If this applicant attends Carver High School he can do the necessary make-up in the Junior High School area which is offered in an adjacent building while nothing but Senior High School work is offered at Lanier High School.

The Defendants considered the additional factors of overcrowded conditions at Lanier and pupil-teacher

ratio, all as set forth more particularly in Paragraph "1" above.

The Defendants denied this application.

24. Joyce Lorraine Thomas, 2161 Dorothy Street, Montgomery, Alabama.

This applicant attended Carver High School last year in the eleventh grade and applied to attend Sidney Lanier High School this year in the twelfth grade.

The applicant lives approximately eight blocks from Carver High School and approximately nineteen blocks from Lanier High School.

According to the California Mental Maturity and Achievement Tests given all eleventh grade students in Alabama last year the applicant showed to be about two grades retarded in mental ability and one and one-half grades retarded in achievement.

The Defendants considered the additional factors of the overcrowded conditions at Lanier and the comparative teacher-pupil ratio, all as more particularly set forth in Paragraph "1" above.

The Defendants denied this application.

25. Mae Carolyn Thomas, 1411 Deer Street, Montgomery, Alabama.

This applicant attended State Laboratory School last year in the ninth grade and has applied to attend Lanier High School this year in the tenth grade.

The applicant lives five blocks from Booker Washington High School and twelve blocks from Lanier High School.

The Defendants considered the additional factors of overcrowded conditions at Lanier and additional rooms at Booker Washington and comparative pupil-teacher ratio, all as more particularly shown in Paragraph "5" above.

The Defendants denied this application.

26. Anthony R. Webb, 567 Watts Street, Montgomery, Alabama.

This applicant applied to attend Capitol Heights Elementary School in the first grade.

This applicant lives in an area where the students attend McDavid Elementary School. Pupils living in the North end of the McDavid Elementary School area that are closer to Booker Washington Elementary School have been allowed to attend either school since the extra rooms were added at Booker Washington Elementary School.

The applicant is only five blocks from Booker Washington Elementary School and twenty blocks from Capitol Heights Elementary School. The route to Capitol Heights Elementary School from the applicants address crosses several busy thoroughfares and is much more hazardous than the route to Booker Washington Elementary School or McDavid Elementary School.

The Defendants denied this application.

27. Linda Diana White, 2344 Day Street, Montgomery, Alabama.

This applicant attended St. Jude's School in the ninth grade last year and has applied to attend Lanier High School in the tenth grade this year. The applicant lives

approximately twenty-one blocks from Carver High

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School and thirty-five blocks from Lanier High School. The route to Lanier High School crosses several busy thoroughfares whereas a tunnel at Fairview Avenue is provided for the most hazardous street crossing between Day Street and Carver High School.

The applicant does not meet the tenth grade entrance requirements in that she does not have any ninth grade mathematics. In the event the applicant attended Carver High School she could take ninth grade mathematics at the Junior High School in an adjacent building where the Carver Junior High School is located, while there is no Junior High School in the area of Sidney Lanier High School.

Lanier High School will be the most overcrowded high school in the County this year. Approximately 2,700 pupils are anticipated and the normal capacity of Lanier High School is approximately 2,000. Lanier High School uses all of its regular classrooms each period as well as approximately fourteen makeshift rooms. The pupil-teacher ratio at Sidney Lanier High School is much higher than the pupil-teacher ratio at Carver High School.

The Defendants denied this application.

SUBMITTED this 1st day of September, 1964.

HILL, ROBISON AND BELSER
Attorneys for Defendants

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Amendment to Motion for Further Relief or Order to Show Cause

(Filed September 1, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Now comes the plaintiffs, by and through their attorneys of record, and amend their "Motion For Further Relief or Order To Show Cause", by adding the following new paragraphs following Paragraph No. 10, to be designated and read as follows:

"11. That the defendants in refusing to approve the applications for transfer or assignment of the said pupils have applied different criteria to the above named pupils than were applied to other pupils attending schools in the Montgomery County school system in the same grades as said pupils.

12. That the defendants allege that they have denied the applications of said pupils '. . . through the use of the Alabama School Placement Law . . .'; that according to said law the following matters may be considered:

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Available room and teaching capacity in the various schools; the availability of transportation facilities; the effect of the admission of new pupils upon established or proposed academic programs; the suitability of established curricula for particular pupils; the adequacy of the pupil's academic preparation for admission to a particular school and curriculum; the scholastic apti-

tude and relative intelligence or mental energy or ability of the pupil; the psychological qualification of the pupil for the type of teaching and associations involved; the effect of admission of the pupil upon the academic progress of other students in a particular school or facility thereof; the effect of admission upon prevailing academic standards at a particular school; the psychological effect upon the pupil of attendance at a particular school; the possibility or threat of friction or disorder among pupils or others; the possibility of breaches of the peace or ill will or economic retaliation within the community; the home environment of the pupil; the maintenance or severance of established social and psychological relationships with other pupils and with teachers; the choice and interests of the pupil; the morals, conduct, health and personal standards of the pupil; the request or consent of parents or guardians and the reasons assigned therefor.

That one or more of said factors has no ascertainable standards, is vague and indefinite, and a decision based upon those factors are arbitrary and deny to plaintiffs and the class they represent the equal protection of the law and due process of law.

13. That said factors contained in said Alabama Pupil Placement Law, as applied to plaintiffs and the class they represent, are unconstitutional and, therefore, null and void."

Respectfully submitted,

FRED D. GRAY
JACK GREENBERG
CHARLES H. JONES
Attorneys for Plaintiffs

Order

(Filed September 5, 1964)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Pursuant to the order and decree of this Court made and entered herein on the 31st day of July, 1964, the Montgomery County Board of Education reported to this Court concerning the action taken by that Board on the applications for transfer and/or assignment to schools in the Montgomery County public school system as made by the parents or guardians of Negro students. This report reflects that a total of 29 applications for transfer and/or assignment were received by the Board during the time allowed by the order of this Court; that the 29 applications were processed by the Board through the use of the Alabama School Placement Law, and that of the 29 applications filed, 8 were granted, 2 were withdrawn and the rest were denied. The plaintiffs on September 1, 1964, made written objections to the action of the Montgomery County Board of Education.

Upon consideration of the plaintiffs' objections and the written report as filed by the Board, this Court on September 1, 1964, ordered and directed that the Montgomery County Board of Education file with this Court in writing its reasons for refusing to grant the applications for transfer and/or assignment of the Negro applicants who were denied; the Board was further directed to advise this Court

in writing as to the standards and criteria which formed the bases for the Board's denial of each of said applications.

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Pursuant to the order of this Court of September 1, wherein the Montgomery County Board of Education was directed to advise this Court in writing as to the reasons, standards and criteria the Board considered supported its action, the Board filed with this Court as of September 1, 1964, in writing, the reasons, standards and criteria applied in the case of each of the Negro applicants.

Upon consideration of the objections by plaintiffs to the action of the Montgomery County Board of Education in denying certain of the applications for transfer and/or assignment, upon consideration of plaintiffs' motion seeking to have this Court order that the defendant Montgomery County Board of Education grant each of the applications for transfer and/or assignment as filed by the Negro applicants who were denied, and upon consideration of the response of the Montgomery County Board of Education to this Court's order directing that said Board set out in writing its reasons, standards and criteria applied in each instance, this Court finds that two of the Negro applicants who were denied have now withdrawn their applications; this Court further finds that in denying the other applications, the Board considered and applied standards and criteria which were in each instance germane to the proper operation of the Montgomery County, Alabama, public educational system as it presently exists and to the effective and efficient continued operation of that system for the benefit of students and parents of both races. Certain of the relevant matters considered by the Board

in making the assignments of Negro applicants and in denying others were: available space in the school to which the transfer was sought, as opposed to the available space in the school last attended by the applicant; pupil-teacher ratio in the school to which the transfer was sought, as opposed to the pupil-teacher ratio in the school last attended by the applicant; the availability of transportation; the suitability of established curricula for the particular pupil in the school to which transfer was sought as opposed to the curricula available in the school last attended; the adequacy of the pupil's academic preparation for admission to the school to which transfer was sought; the scholastic aptitude of the applicant for transfer; and the geographical location of the applicant's home with reference to the school last attended and the school to which the transfer was sought. None of the factors considered by the Board which resulted in the denial of certain of the applications of Negroes for transfer include hostility on the part of the Board, other public officials or the public.

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This Court now specifically finds and concludes that in the case of each of the applicants, whether the application was granted or denied, the action of the Montgomery County school authorities constituted a good faith implementation of the governing constitutional principles and a good faith compliance with the orders of this Court. Since *Brown* v. *Board of Education,* 349 U.S. 294, the courts have consistently recognized that the district courts, faced with the practical problems involved in the desegregation of the public school systems, would be justified in initially requiring something less than total desegregation. In recognition of this legal principle and in recognition of the particular local school problems existing in the Mont-

gomery County public school system (which problems have been made known to this Court during the course of this litigation), and in the exercise of this Court's equity power, it is the ORDER, JUDGMENT and DECREE of this Court that the motion of the Negro plaintiffs filed herein on September 1, 1964, and amended on the same date, seeking to have this Court order the Montgomery County Board of Education to grant all the applications for transfer and/or assignment as filed with the Board and thereby order the admission of all the Negro children who, by their applications, have requested assignment or transfer to schools heretofore attended only by pupils of the white race, be and the same is hereby denied.

It is the further ORDER, JUDGMENT and DECREE of this Court that the action taken by the Montgomery County Board of Education in granting the applications made by parents or guardians for the transfer and/or assignment of eight Negro children to schools in the Montgomery County public school system heretofore attended only by pupils of the white race, be and the same is hereby approved and accepted by this Court.

It is ORDERED that jurisdiction be and the same is hereby specifically retained.

Done, this the 5th day of September, 1964.

FRANK M. JOHNSON, JR.
United States District Judge

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Suggestion of Amicus Curiae Re Substitution of Parties Under Rule 25(d) F.R.C.P.

(Filed January 11, 1965)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Now comes Ben Hardeman, one of the Amici Curiae appointed by this Court on May 18, 1964, and suggests to the Court that the following Members of the Montgomery County Board of Education, Harold M. Harris, Dr. H. P. Dawson, and Dr. W. E. Goodwin, are no longer serving, their terms of office having terminated in accordance with Title 62, Section 5, of the Code of Alabama of 1940, and that their successors, James W. Rutland, Jr., George C. Starke, and Dr. J. Edward Walker have been elected, have qualified and are now serving as Members of the Montgomery County Board of Education, Montgomery, Alabama.

WHEREFORE, this Amicus Curiae suggests to the Court that an Order substituting James W. Rutland, Jr., George C. Starke, and Dr. J. Edward Walker, and deleting Harold M. Harris, Dr. H. P. Dawson, and Dr. W. E. Goodwin as Defendants in this cause is now appropriate, and should be rendered.

This suggestion is made pursuant to Rule 25(d) of the Federal Rules of Civil Procedure and is based upon all of

the pleadings and documents filed in this case and upon the Affidavit of the undersigned attached hereto.

Dated this 8th day of January, 1965.

BEN HARDEMAN
United States Attorney
Amicus Curiae

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AFFIDAVIT

STATE OF ALABAMA)
)
MONTGOMERY COUNTY)

I, Ben Hardeman, having been duly sworn, say:

I am the United States Attorney for the Middle District of Alabama.

In connection with my duties as United States Attorney and as Amicus Curiae in this cause, I have reviewed the file in this case and it discloses that Harold M. Harris, Dr. H. P. Dawson, and Dr. W. E. Goodwin are no longer serving as Members of the Montgomery County Board of Education, Montgomery, Alabama, and that James W. Rutland, Jr., George C. Starke, and Dr. J. Edward Walker have been elected, have qualified, and are now serving as Members of said Montgomery County Board of Education.

This affidavit is made in support of the suggestion of affiant as Amicus Curiae in reference to the Substitution of said parties to which it is attached.

BEN HARDEMAN
United States Attorney

Sworn to January 8th, 1965.

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Order Substituting Parties

(Filed January 11, 1965)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

It appears from the affidavit of Ben Hardeman, which is attached to his suggestion as Amicus Curiae re Substitution of Parties that the terms of office of Harold M. Harris, Dr. H. P. Dawson, and Dr. W. E. Goodwin, defendants in this cause, have terminated as Members of the Montgomery County Board of Education, in accordance with the provision of Title 62, Section 5 of the Code of Alabama of 1940 and by reason of said termination they no longer hold office. It further appears that James W. Rutland, Jr., George C. Starke, and Dr. J. Edward Walker have been elected to serve as Members of said Board, have qualified, and are presently serving in that capacity. It is therefore appropriate that an order of substitution be entered herein, as provided by Rule 25(d) of the Federal Rules of Civil Procedure, reflecting this change and that the new Members, James W. Rutland, Jr., George C. Starke, and Dr. J. Edward Walker, be served with the Memorandum Opinion and Decree of this Court as made and entered herein on July 31, 1964, and the Writ of Injunction issued thereupon on the same day.

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Now, THEREFORE, in consideration of the foregoing and pursuant to the provisions of Rule 25(d), Federal Rules of

Civil Procedure, it is the ORDER, JUDGMENT and DECREE of this Court that James W. Rutland, Jr., George C. Starke, and Dr. J. Edward Walker, be and they are hereby substituted as parties defendant for Harold M. Harris, Dr. H. P. Dawson and Dr. W. E. Goodwin.

The Clerk of this Court is ORDERED and DIRECTED to serve by registered mail upon James W. Rutland, Jr., George C. Starke, and Dr. J. Edward Walker, certified copies of the Memorandum Opinion and Decree of this Court made and entered in this cause on July 31, 1964, and the Writ of Injunction issued thereupon on the same day.

DONE this 11th day of January, 1965.

FRANK M. JOHNSON, JR.
United States District Judge

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Defendants' Plan for Desegregation

(Filed January 15, 1965)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Now Come the Defendants in the above entitled cause, and, as required by the order of this Court dated July 31, 1964, submit the following plan for the desegregation of the entire school system in Montgomery County, Alabama:

1. *Assignments*:

All existing school assignments shall continue without change except when transfers or assignments are authorized by the Superintendent of Education of Montgomery County, Alabama under the supervision and review of the Board of Education of Montgomery County, Alabama. Pupils entering any grade to which this plan shall have

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become applicable and pupils otherwise entering the school system for the first time when this plan shall have become applicable to the grade entered, shall be assigned without regard to race as is provided hereinafter.

2. *Transfer and Assignment*:

A. Parents or legal guardians of pupils residing in Montgomery County, Alabama prior to June 15, of each year, in grades to which this plan shall have become applicable wishing school assignment for the pupils to a

school attended only by pupils of a race other than that of the applicant, prior to the entry of the judgment of this Court in this case in July of 1964, shall make application to that end, as hereinafter provided, between June 1 and June 15, of each year for the next succeeding school year, beginning with the school year 1965-1966.

B. Parents or legal guardians of pupils entering the Montgomery County School System for the first time, in grades to which this plan shall have become applicable and not having been residents of Montgomery County on the preceding June 15, and wishing school assignment for the pupil to attend a school other than a school formerly attended by pupils of their race, prior to the entry of the judgment of this Court in this case in July of 1964, shall make application to that end at the Office of the Superintendent of Education of Montgomery County, Alabama and said application shall be promptly processed without regard to race in accordance with the provisions of this plan.

3. *Assignment Authority:*

In the assignment or transfer of pupils under this plan in or to specific schools, subject to the supervision and review by the Board of Education of Montgomery County, Alabama, the Superintendent of Education shall be charged with the responsibility for the assignment or transfer of pupils.

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4. *Transfer or Assignment Request:*

A. All applications for transfer or assignment to grades as reached under this plan must be filed on or before June 15 of each year on forms obtained from the Office of

the Superintendent of Education of Montgomery County, Alabama, by the parents or legal guardians of the pupils for whom such applications are to be made and must be completed, signed and returned between June 1 and June 15 of each year to the Office of the Superintendent of Education of Montgomery County, Alabama by the respective parents or legal guardians of the pupils. The proper forms will be furnished to parents of pupils on request between June 1 and June 15 of each year. Separate applications must be filed for each pupil for whom an assignment or transfer is requested.

B. In the assignment of pupils in those grades reached by this plan the relevant factors in the Alabama School Placement Law shall be applied without discrimination on a basis of race or color.

C. *Notice of action taken*: Notice of the action taken by the *Assignment Authority* on each application filed under this plan will be made on or before August 1 of each year to the parents or legal guardians of each pupil for whom the application was made.

5. *Applicability of Plan*:

This plan shall have application in the school year beginning September, 1965, to the 12th, 11th, 10th, 9th, and 2nd and 1st grades. This plan's applicability shall be extended through continued school years thereafter to include additional grades as follows:

For the school year beginning September, 1966, the 3rd and 8th grades.

For the school year beginning September, 1967, the 4th and 7th grades.

For the school year beginning September, 1968, the 5th grade.

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For the school year beginning September, 1969, the 6th grade.

Twice each week for the week beginning May 30, 1965, and June 6, 1965, the Superintendent of Education of Montgomery County, Alabama shall direct publication in a daily newspaper in the City of Montgomery, Alabama, the following notice:

"NOTICE TO PARENTS, PUPILS AND TEACHERS IN THE MONTGOMERY COUNTY PUBLIC SCHOOL SYSTEM:

You are hereby notified that as required by the order of the United States District Court for the Middle District of Alabama, the Board of Education, Montgomery County, Alabama, has adopted the following plan for the desegregation of the entire school system of Montgomery County, Alabama:

1. Grades in the school system are or will be desegregated at the following time:

a. for the school year beginning September, 1965, grades 12th, 11th, 10th, 9th, 2nd and 1st.

b. for the school year beginning September, 1966, the 3rd and 8th grades.

c. for the school year beginning September, 1967, the 4th and 7th grades.

d. for the school year beginning September, 1968, the 5th grade.

e. for the school year beginning September, 1969, the 6th grade.

2. All applications for assignment or transfer in the grades as reached by this plan shall be filed in the Office of the Superintendent of Education of Montgomery County, Alabama, between June 1 and June 15 of each year.

3. All such applications must be filed on forms obtained between June 1 and June 15 of each year from the Office of the Superintendent of Education for Montgomery County, Alabama, by the parents or legal guardians of the pupils for whom such applications are to be made and must be completed and signed by the respective parents or legal guardians of such pupils and returned by them to the Office of the Superintendent of Education for Montgomery County, Alabama.

4. All applications filed within the time and in the manner stated will be processed and determined without discrimination as to race of the applicants, and the parents or legal guardians of the applicants will be notified on or before August 1 of each year of the action taken on the applications so filed."

This 15th day of January, 1965.

Respectfully submitted,

HILL, ROBISON AND BELSER

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Certificates of Service (omitted in printing)

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Order

(Filed January 18, 1965)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

The defendants in the above-styled case, pursuant to the order of this Court made and entered herein on July 31, 1964, filed with the Clerk of this Court on January 15, 1965, the plan under which said defendants propose to desegregate the public school system of Montgomery County, Alabama.

It is ORDERED that the objections, if any, to the proposed plan as now submitted and filed by said defendants, be made in writing and filed with the Clerk of this Court on or before February 16, 1965.

Done, this the 18th day of January, 1965.

FRANK M. JOHNSON, JR.
United States District Judge

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Motion for Extension of Time

(Filed February 15, 1965)

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

The United States of America, Amicus Curiae herein, moves the Court for an order extending the time within which the United States may file objections to the Defendants' plan for desegregation and a memorandum in support thereof so that the said objections may be filed by the United States no later than February 25, 1965.

The basis for this motion is that the granting of this additional time is necessary in order to properly and adequately consider and evaluate the said Defendants' plan for desegregation.

Dated this 15th day of February, 1965.

UNITED STATES OF AMERICA
By BEN HARDEMAN

BEN HARDEMAN
United States Attorney

ORDER

The motion of the United States of America for an order extending the time in which the United States may file objections to the Defendants' plan for desegregation and a memorandum in support thereof is hereby granted. It is ORDERED that the said objections may be filed by the United States no later than February 25, 1965.

DONE this 15th day of February, 1965.

FRANK M. JOHNSON, JR.
United States District Judge

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Motion for Extension of Time

(Filed February 16, 1965)

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Now come the Plaintiffs, by and through their Attorneys of Record, and move the Court for an Order extending the time within which they may file objections to the Defendants' plan for desegregation so that said objections may be filed in this Court not later than February 26, 1965.

In support of said Motion, Plaintiffs state that additional time is necessary in order that the Plaintiffs may properly and adequately prepare their objections to said plan.

Respectively submitted this 16th day of February, 1965.

FRED D. GRAY
JACK GREENBERG
CHARLES H. JONES, JR.
Counsel for Plaintiffs

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Order Allowing Extension of Time
(Filed February 16, 1965)

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

The above and foregoing motion for an order extending the time for the Plaintiffs to file objections to Defendants' plan for desegregation being considered and understood by the Court, the same is hereby granted. It is ORDERED, ADJUDGED and DECREED that said objections may be filed by the Plaintiffs not later than February 25, 1965.

Done this 16th day of February, 1965.

FRANK M. JOHNSON, JR.
United States District Judge

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Plaintiffs' Objections to Defendants' Plan of School Desegregation

(Filed February 23, 1965)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Plaintiffs, having been given until February 25, 1965 by order of this Court of February 16, 1965 to file objections to defendants' plan of desegregation, hereby give notice of the following objections thereto as will hereinafter be set out more fully and state:

1. In their plan, defendants propose to initially assign all students to schools for the 1965-66 school term on the basis solely of race or color and to consider applications for transfer from students entering grades 9-12 and 1-2 "without discrimination". Defendants further propose to consider applications of students "without discrimination" in grades 3 and 8 in 1966, in grades 4 and 7 in 1967, in grade 5 in 1968, and in grade 6 in 1969.

2. Defendants' desegregation plan provides only for the consideration of transfer requests made at the instance of

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the pupils. The plan does not provide for removing those factors from the school system which tend to encourage, promote and perpetuate segregation, e.g., segregated pre-school clinics, "feeder" schools which operate on a racial basis, segregated teaching and professional staff, segre-

gated special programs [e.g., classes for the handicapped or gifted, adult, vocational or commercial education or kindergarten programs]. In short, defendants' desegregation plan is not designed to eliminate imposed segregation from the Montgomery public school system. While plaintiffs object to defendants' failure to plan for the final abolition of segregation from the school system, plaintiffs emphasize the following points as that plan proposes to operate during 1965-66.

I

Defendants Should Be Required To Either Make Initial Assignments On A Nonracial Basis, Or Adopt A Genuine "Freedom Of Choice" Plan.

Defendants propose to initially assign all pupils in grades 9-12 and 1-2 on a racial basis for the 1965-1966 school year. (Negro pupils entering the first grade or those who enter the system during the summer, who want to attend a "white" school are required to apply for assignment at the school administrative office. If these pupils want to attend a "Negro" school, they will routinely present themselves at that school and be assigned thereto without fanfare.) Pupils in those grades who want to attend school with pupils of another race must apply for transfer and for their applications in accordance with the provisions of the Alabama Pupil Placement Act. They must now do so within the framework of dual school zones

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based solely on race, notwithstanding decisions in *Gaines* v. *Dougherty County Board of Education*, 329 F.2d 823; 334 F.2d 983 (5th Cir. 1964); *Armstrong* v. *Board of Education of Birmingham*, 333 F.2d 47 (5th Cir. 1964); and

Bush v. *Orleans Parish Board of Education,* 308 F.2d 491 (5th Cir. 1962) requiring such dual school zone lines to be redrawn on a non-racial basis.

Defendants' proposal to initially assign all pupils on a basis of race and to then permit transfers under certain conditions is clearly unconstitutional. *Bush* v. *Orleans Parish School Board,* supra; *Gibson* v. *Board of Public Instruction,* 272 F.2d 763. (5th Cir. 1959); *Mannings* v. *Board of Public Instruction,* 277 F.2d 370 (1960) and *Norwood* v. *Tucker,* 287 F.2d 798 (8th Cir. 1961).

Particularly is this so under defendants' plan which places a heavy burden on Negro parents. Under defendants' plan all prospective Negro transferees to "white" schools must: (a) have their parents secure transfer forms from the central administrative office; and (b) have their parents complete and return the forms to the central administrative office.

Plaintiffs submit that defendants should be required to redraw school zone lines on a non-racial basis and then initially assign pursuant thereto all students to the public school system. In the alternative, plaintiffs submit that the "freedom of choice" plan set out by the Fifth Circuit in *Gaines,* supra at 985 and *Stell* v. *Savannah-Chatham Board of Education,* 333 F.2d 55 at p. 65, is a reasonable alternative for this court to require defendants to implement during a period of "transition."

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II

There Are No Valid Reasons Why Grades 3-8 Cannot Be Immediately Desegregated.

Unless defendants are required to assign all students according to non-racial criteria, it is likely that pressures

and other concerns will reduce to a small number the Negro parents willing to seek the admission of their children into white schools. For example, last year about 30 Negro pupils applied for transfer in Montgomery and a number of these did not pursue administrative remedies under the Placement Act. Other school districts have had similar experiences during the early years of school desegregation. There is thus no reason to limit the opportunity to obtain a desegregated education to students in grades 9-12 and 1-2. *Stell* v. *Savannah-Chatham County Board of Education,* 333 F.2d 55 at p. 64 (5th Cir. 1964); *Hall* v. *West,* 335 F.2d 481 (5th Cir. 1964).

III

Defendants' Proposed Notice Will Not "Bring Home To Negro Pupils" Of Their Rights Under The Plan.

Defendants propose to publish notice of their "transfer" plan in a newspaper daily circulation four times within a two-week period, beginning May 30, 1965. Plaintiffs specifically object to:

(a) The legalistic, technical language of the notice;

(b) The absence of a statement setting out circumstances under which transfers may be sought and the conditions to be satisfied;

(c) The brevity of the "transfer period"—June 1-15, 1965;

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(d) The timing of the notice which is to be published the day before the transfer period begins to run;

(e) The proposal to limit publication of the notice to a newspaper of general circulation;

(f) The failure of the notice to advise Negro pupils entering either the first grade or the school system for the first time of their rights under the plan;

(g) The failure to give written notice to the parents of each child presently in the system as to their rights under the desegregation plan, together with an appropriate form upon which such choice may be made.

Plaintiffs submit that no less than a statement, mailed to each parent in the system, which sets forth simply and in layman's terms that pupils in the grades affected under the plan may be admitted to the closest "white" or "Negro" school under specific circumstances will suffice. *Gaines,* supra. Plaintiffs submit that the transfer period should be extended over a period of no less than 30 days, and that this period should include several weeks prior to the close of the school year.

In addition to newspaper publication and individual notice to parents, the notice should be conspicuously posted by defendants on bulletin boards within the schools. Teachers, principals and other faculty or school board personnel should be prohibited from attempting to influence the action taken by parents under the plan. *Stell* v. *Savannah-Chatham County Board of Education,* supra; *Gibson* v. *Board of Public Instruction of Dade County,* 272 F.2d 763 (5th Cir. 1959); *Augustus* v. *Board of Public Instruction of Escambia County,* 306 F.2d 862 (5th Cir. 1962).

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And as additional objections to said plan submitted by the defendants, plaintiffs assign the following:

1. The plan fails to set ascertainable standards for considering applications for assignment or transfer of pupils

to a particular school, in that under said plan the defendants are permitted to apply different standards to different pupils, as is indicated by the report to this Court made by the defendants on September 1, 1964; which report indicates the action taken by the defendants on the applications for transfer for the school year 1964-65.

2. The plan fails to provide for faculty and professional staff desegregation. *Board of Public Instruction of Duval County* v. *Braxton,* 326 F. 2d 616 (5th Cir., 1964); *Northcross* v. *Board of Education of Memphis,* 333 F. 2d 661 (6th Cir., 1964).

3. The plan makes no provision for providing bus transportation on a reorganized non-racial basis.

4. The plan does not attempt to nor can it effectuate desegregation of the public schools of Montgomery County, Alabama.

5. The plan does not provide for the elimination of school zone lines based on race. *Gaines* v. *Dougherty County Board of Education, supra; Bush* v. *Orleans Parish Board of Education,* 308 F. 2d 491 (5th Cir., 1962); *Augustus* v. *Board of Public Instruction,* 306 F. 2d 862 (5th Cir., 1962).

6. The plan places the burden of desegregating the public school system of Montgomery County, Alabama, on Negro pupils and their parents, and does not provide for

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initiation of desegregation by the Board; and as such, the plan is in conflict with the opinion and judgment of this

Court and is in conflict with decisions of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit.

7. The plan fails to abolish the continued use of racial factors in the planning of extra-curricula activities, construction of schools, planning of school budgets and the disbursement of school funds.

8. The plan sets up dual procedures and dual time limits for Negro students who wish to attend white schools and for Negro students who wish to attend Negro schools.

9. The plan fails to provide for immediate desegregation of vocational programs offered by the defendants.

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WHEREFORE, plaintiffs pray that pursuant to this court's order and opinion of July 31, 1964, that the court will promptly set a hearing on plaintiffs' objections to the plan and that upon such hearing the court will grant the relief prayed for above. Plaintiffs further pray that this court will retain jurisdiction of this cause for the purpose of granting such further relief as may be required by further developments.

Respectfully submitted,

FRED GRAY
JACK GREENBERG
CHARLES JONES, JR.

CERTIFICATE OF SERVICE (omitted in printing)

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Amicus Curiae Objections to Plan for Desegregation

(Filed February 25, 1965)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

The United States of America, as Amicus Curiae herein, objects to the proposed plan for the desegregation of the Montgomery County, Alabama, school system submitted by the defendants on January 15, 1965, for the following reasons:

1. The proposed plan contemplates initial assignment of all students upon the basis of their race.

2. The proposed plan does not provide for the ultimate elimination of the present bi-racial school district zones or attendance areas.

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3. The proposed plan places upon Negro children and their parents the burden of applying for reassignment on a non-racial basis.

4. The applicability of the proposed plan to the seventh grade is delayed too long, and there is no provision for lateral transfer on a selective basis to grades not already affected by the plan.

JOHN DOAR
Acting Assistant Attorney General

BEN HARDEMAN
United States Attorney

JONATHAN B. SUTIN, Attorney
Department of Justice

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Notice of Taking Depositions

(Filed March 29, 1965)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Hon. Ben Hardeman, U. S. Attorney
Post Office Building
Montgomery, Alabama

Hon. John Doar, U. S. Attorney
Hon. Jonathan B. Sutin
United States Department of Justice
Washington, D. C.

Hill, Robison & Belser
Attorneys and Counsellors at Law
26 South Perry Street
Montgomery, Alabama

Walter McKee, Superintendent
Montgomery County Schools
305 South Lawrence Street
Montgomery, Alabama

PLEASE TAKE NOTICE that at 9 o'clock a.m. on the 1st day of April, 1965 in the Attorney's Conference Room, second floor, Post Office Building, Montgomery, Alabama, the plaintiffs in the above-entitled action will take the deposition of Mr. Walter McKee, Superintendent of Schools of Mont-

gomery County, Alabama, upon oral examination, pursuant to Federal Rules of Civil Procedure before Mrs. Dorothy Jackson, a notary public, or some other officer authorized by law to administer oaths.

Please take further notice that Walter McKee is hereby required to produce upon such examination all papers, records, books, memoranda and other documentary evidence from July 31, 1963 to date, showing the following:

1. For each public school in the Montgomery County, Alabama, school district (using latest available figures unless otherwise indicated):

(a) Grades served by each school;

(b) Number of classrooms and pupil capacity (if differentiation is made between normal pupil capacity and emergency pupil capacity, specify);

(c) Number of Negro pupils assigned and/or in attendance as of the beginning of the 1964-65 school year, and as of the most recent date for which figures are available at each school;

(d) Number of white pupils in attendance as of the beginning of the 1964-65 school year, and as of the most recent date for which figures are available at each school;

(e) Number of Negro pupils in each grade;

(f) Number of white pupils in each grade;

(g) Difference between the number of pupils enrolled and capacity of school (i.e., either in excess or below pupil capacity);

(h) Average class size for kindergarten, regular and special classes and average for all classes;

(i) Pupil-teacher ratio;

(j) Number of Negro teachers and other Negro administrative or professional personnel employed as of the beginning of the 1964-65 school year at each school;

(k) Number of white teachers and other administrative or professional personnel employed as of the beginning of the 1964-65 school year at each school;

2. All courses available in each and every grade of each school in the Montgomery County school system.

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3. Expenditures, per pupil, for white and Negro pupils, indicating whether such expenditures are from state or local funds.

4. The number of new teachers hired during each of the past five school years and the total number of teachers employed during each such school year (if possible, distinguish between replacement teachers and new teachers);

5. Each school attendance area or zone, and using best available estimates or projections if precise figures are not available, show;

(a) Number of Negro school pupils residing within each such area and attending the grades for which such area applies;

(b) The number of white school pupils residing within each such area and attending the grades for which such area applies;

6. List all new schools, proposed or under construction, with information indicating with respect to each;

(a) Location;

(b) Expected date of occupancy;

(c) Pupil capacity;

(d) Probable area to be served;

(e) Number of Negro and white pupils living in area to be served in grades to be served;

7. Age of all school buildings.

8. Extra-curricular use of all school facilities, i.e., driver training courses, pre-school clinics, and all such activities not part of normal school curriculum.

9. Minutes of all meetings of the Montgomery County Board of Education from July 31, 1964 to date.

10. Copies of all Annual Reports and any and all other documents compiled by the Montgomery County Board of Education and sent to the Alabama State Board of Education from July 31, 1964 to date.

11. Copies of all maps and other descriptions, verbal and diagrammatic, showing the school districts and "feeder"

plans for access to the Junior High and High Schools, throughout Montgomery County, Alabama showing changes from July 31, 1964 to date.

12. All records involving the kind and cost of school construction throughout Montgomery County, Alabama, since July 31, 1964.

13. All attendance records of schools operated by the Montgomery County Board of Education from July 31, 1964 to date.

14. All school bus and other school transportation records of the Montgomery County Board of Education from July 31, 1964 to date.

15. All records involving intra-county school transfers of students in Montgomery County, Alabama, from July 31, 1964 to date.

16. All other documents connected with the administration and operation of the schools of Montgomery County, Alabama since July 31, 1964 on which there appear designations of race or color.

17. Copies of all records, reports, investigations, result of examinations, and all other documents, including the names and addresses of all pupils who transferred or applied for transfer from one school (public school) in Montgomery County to another public school in Montgomery County since July 31, 1964.

18. Copies of all correspondence sent at the direction of the Montgomery County Board of Education to the parents of students of all schools in this county that were affected by the Court's order of July 31, 1964.

19. Copies of all substitute teachers list indicating which lists were distributed to what Principals since July 31, 1964 to date.

20. Copies of all records, documents, reports, studies, investigations and all of written evidence showing every-

thing which the defendants have done since July 31, 1964, toward eliminating the dual school system based upon race and color as found to exist by the court in its order of July 31, 1964.

21. Copies of all written evidence showing the affirmative steps taken by the defendants to provide and operate a desegregated educational system in Montgomery County, Alabama since July 31, 1964.

22. Copies of all rules and regulations concerning:

(1) the initial assignment of students and,

(2) the transfer of students from one school to another school in the County system.

23. Average daily attendance list for each school in Montgomery County school system, since September 1, 1964.

24. Copies of all circulars or informational letters circulated by the Superintendent's office or Board of Education to principals or teachers for distribution to pupils for delivery to parents.

25. List of all courses taught per grade for each school in Montgomery school system.

The oral examination will continue from day to day until completed. You are invited to attend and cross examine.

Done this 29th day of March, 1965.

FRED D. GRAY
JACK GREENBERG
CHARLES H. JONES, JR.
Attorneys for Plaintiffs

Defendants' Motion to Extend Time

(Filed March 29, 1965)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Now come the Defendants in the above entitled cause and show unto the Court as follows:

1. That objections to the desegregation plan, as submitted by Plaintiffs in this proceeding, were filed with this Court, after extension, on February 25, 1965. The Court thereupon set April 5, 1965 as the date for the hearing of said objections.

2. On March 29, 1965, at approximately 1:30 P.M., the Plaintiffs served the Defendant, Walter T. McKee, with notice that his deposition is to be taken at 9:00 A.M. on April 1, 1965. The Defendant, Walter T. McKee, was also served with a detailed and involved subpoena duces tecum containing some twenty-five items of compilation. Copies of this said motion and said subpoena duces tecum is attached hereto and made a part hereof.

It is impossible for the Defendants to compile this voluminous data within the two day period as set by the Plaintiffs, and this Defendant respectfully shows that such a requirement is unreasonably oppressive to him and to the administration of the Montgomery County Board of Education.

WHEREFORE, the Defendants pray that the hearing of the said objections be postponed and continued, to be set after this Defendant is given reasonable time to comply with the requirements as set out in the above-mentioned motion and subpoena duces tecum. The Defendants pray in the

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alternative that Walter T. McKee not be required to compile and furnish the voluminous and detailed information sought by the said subpoena duces tecum, but that the Plaintiffs go to the Board of Education office of Montgomery County, and avail themselves of the records therein kept, as they did prior to July 31, 1964.

HILL, ROBISON AND BELSER
Attorneys for Defendants

Certificates of Service (omitted in printing)

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Subpoena Dated March 29, 1965

UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

YOU ARE COMMANDED to appear at Room 208—Post Office Building in the city of on the 1st day April, 1965, at 9:00 o'clock A. M. to testify on behalf of Plaintiffs at the taking of a deposition in the above entitled action pending in the United States District Court for the Middle District of Alabama and bring with you the documents listed on the attached sheet.

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Please take further notice that Walter McKee is hereby required to produce upon such examination all papers, records, books, memoranda and other documentary evidence from July 31, 1964 to date, showing the following:

1. For each public school in the Montgomery County, Alabama, school district (using latest available figures unless otherwise indicated):

(a) Grades served by each school;

(b) Number of classrooms and public capacity (if differentiation is made between normal pupil capacity and emergency pupil capacity, specify);

(c) Number of Negro pupils assigned and/or in attendance as of the beginning of the 1964-65 school year, and as of the most recent date for which figures are available at each school;

(d) Number of white pupils in attendance as of the beginning of the 1964-65 school year, and as of the most recent date for which figures are available at each school;

(e) Number of Negro pupils in each grade;

(f) Number of white pupils in each grade;

(g) Difference between the number of pupils enrolled and capacity of school (i.e., either in excess or below pupil capacity);

(h) Average class size for kindergarten, regular and special classes and average for all classes;

(i) Pupil-teacher ratio;

(j) Number of Negro teachers and other Negro administrative or professional personnel employed as of the beginning of the 1964-65 school year at each school;

(k) Number of white teachers and other administrative or professional personnel employed as of the beginning of the 1964-65 school year at each school;

2. All courses available in each and every grade of each school in the Montgomery County school system.

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3. Expenditures, per pupil, for white and Negro pupils, indicating whether such expenditures are from state or local funds.

4. The number of new teachers hired during each of the past five school years and the total number of teachers employed during each such school year (if possible, distinguish between replacement teachers and new teachers);

5. Each school attendance area or zone, and using best available estimates or projections if precise figures are not available, show;

(a) Number of Negro school pupils residing within each such area and attending the grades for which such area applies;

(b) The number of white school pupils residing within each such area and attending the grades for which such area applies;

6. List all new schools, proposed or under construction, with information indicating with respect to each;

(a) Location;

(b) Expected date of occupancy;

(c) Pupil capacity;

(d) Probable area to be served;

(e) Number of Negro and white pupils living in area to be served in grades to be served;

7. Age of all school buildings.

8. Extra-curricular use of all school facilities, i.e., driver training courses, pre-school clinics, and all such activities not part of normal school curriculum.

9. Minutes of all meetings of the Montgomery County Board of Education from July 31, 1964 to date.

10. Copies of all Annual Reports and any and all other documents compiled by the Montgomery County Board of

Education and sent to the Alabama State Board of Education from July 31, 1964 to date.

11. Copies of all maps and other

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plans for access to the Junior High and High Schools, throughout Montgomery County, Alabama showing changes from July 31, 1964 to date.

12. All records involving the kind and cost of school construction throughout Montgomery County, Alabama, since July 31, 1964.

13. All attendance records of schools operated by the Montgomery County Board of Education from July 31, 1964 to date.

14. All school bus and other school transportation records of the Montgomery County Board of Education from July 31, 1964 to date.

15. All records involving intra-county school transfers of students in Montgomery County, Alabama, from July 31, 1964 to date.

16. All other documents connected with the administration and operation of the schools of Montgomery County, Alabama since July 31, 1964 on which there appear designations of race or color.

17. Copies of all records, reports, investigations, result of examinations, and all other documents, including the names and addresses of all pupils who transferred or ap-

plied for transfer from one school (public school) in Montgomery County to another public school in Montgomery County since July 31, 1964.

18. Copies of all correspondence sent at the direction of the Montgomery County Board of Education to the parents of students of all schools in this county that were affected by the Court's order of July 31, 1964.

19. Copies of all substitute teachers list indicating which lists were distributed to what Principals since July 31, 1964 to date.

20. Copies of all records, documents, reports, studies,

[Copy illegible]

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that the defendants have done since July 31, 1964, toward eliminating the dual school system based upon race and color as found to exist by the court in its order of July 31, 1964.

21. Copies of all written evidence showing the affirmative steps taken by the defendants to provide and operate a desegregated educational system in Montgomery County, Alabama since July 31, 1964.

22. Copies of all rules and regulations concerning:

(1) the initial assignment of students and,

(2) the transfer of students from one school to another school in the County system.

23. Average daily attendance list for each school in Montgomery County school system, since September 1, 1964.

24. Copies of all circulars or informational letters circulated by the Superintendent's office or Board of Education to principals or teachers for distribution to pupils for delivery to parents.

25. List of all courses taught per grade for each school in Montgomery school system.

The oral examination will continue from day to day until completed. You are invited to attend and cross examine.

Done this 29th day of March, 1965.

FRED D. GRAY
JACK GREENBERG
CHARLES H. JONES, JR.
Attorneys for Plaintiffs

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Order Extending Time for Taking Deposition and Holding Hearing

(Filed March 30, 1965)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

This cause is now submitted upon the motion of the defendants filed herein on March 29, 1965, seeking to have the objections to their proposed desegregation plan postponed and continued until said defendants are given a reasonable time to comply with the requirements set out in plaintiffs' subpoena duces tecum served upon the attorneys for said defendants on March 29, 1965.

Upon consideration of said motion, it is ORDERED that the taking of the deposition of the defendant Walter T. McKee, heretofore scheduled by plaintiffs for 9 a.m. on April 1, 1965, be and the same is hereby stayed until April 15, 1965.

It is further ORDERED that the hearing upon the objections to the desegregation plan heretofore filed with this Court by the defendants, said hearing being presently scheduled for 10 a.m. on April 5, 1965, be and the same is hereby continued until 10 a.m. on April 28, 1965.

Done, this the 30th day of March, 1965.

FRANK M. JOHNSON, JR.
United States District Judge

Amendment to Plaintiff's Objections to Defendant's Plan of School Desegregation

(Filed April 24, 1965)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Come now the Plaintiffs in the above-styled cause and amend hereby their objections to Defendant's Plan of School Desegregation, heretofore filed herein, by adding thereto a new paragraph to be numbered 10 and to state as follows:

10. The Plan in its method of application of the Alabama Pupil Placement Law to assign Plaintiffs and the class they represent both prospectively and retrospectively, is an unconstitutional application of the said Pupil Placement Law, and as applied, said Pupil Placement Law violates the 14th Amendment to the Constitution of the United States.

FRED D. GRAY
JACK GREENBERG
CHARLES JONES, JR.
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE (omitted in printing).

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Order Extending Time for Holding Hearing

(Filed April 28, 1965)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

It is ORDERED that the hearing upon the objections to defendants' proposed desegregation plan be and the same is hereby continued to commence at 10 a.m., Wednesday, May 5, 1965.

Done, this the 28th day of April, 1965.

FRANK M. JOHNSON, JR.
United States District Judge

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(Court's Reporter's Transcript of Court's Remarks Dictated Into Record at Close of Hearing on May 5, 1965, Filed May 6, 1965, at the Request of Appellants Appears With the Other Transcripts in Vol. III of This Appeal Record, at Original Page 442.)

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Order Approving and Modifying Plan for Desegregation

(Filed May 18, 1965)

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE MIDDLE DISTRICT OF ALABAMA

NORTHERN DIVISION

This cause coming on to be heard on May 5, 1965, on the objections of the plaintiffs and of the United States to the plan for desegregation filed pursuant to the order of this Court,

It is the ORDER, JUDGMENT, and DECREE of this Court that the plan for desegregation be and the same is hereby approved with the following modification:

(1) Grade seven, in addition to grades one, two, nine, ten, eleven, and twelve, is to be desegregated the coming school term, September 1965, by the Montgomery County Board of Education.

(2) All applications for transfer or assignment to grades one, two, seven, nine, ten, eleven, and twelve must be filed on or before July 20, 1965, on forms obtained from the Office of the Superintendent of Education of Montgomery County, by the parents or legal guardians of the pupils for whom such applications are to be made. These applications shall be made available and furnished, upon request, to the parents or legal guardians of the pupils for whom such applications are being made, at the Office of the Superintendent of Education of Montgomery County,

between June 21 and July 20, 1965, Monday through Friday, from 8:30 A.M. to 5:00 P.M. It shall not be necessary for more than one parent or guardian to pick up, return, and sign the application.

(3) The Superintendent of Education of Montgomery County shall direct the principals of the Montgomery County Public Schools to enclose in an envelope together with each pupil's final report card for the school term 1964-1965, the following Notice:

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NOTICE TO ALL PARENTS OR GUARDIANS OF PUPILS IN THE MONTGOMERY COUNTY PUBLIC SCHOOL SYSTEM

In accordance with an order of the United States District Court for the Middle District of Alabama, the Montgomery County Board of Education will desegregate grades one and two of the elementary schools, grades seven and nine of the junior high schools, and grades ten, eleven, and twelve of the senior high schools for the school year commencing in September 1965.

As the parents or guardians of pupils who will attend these grades in September 1965, you may submit an application to the Office of the Superintendent of Education of Montgomery County for your child to attend a school that was formerly attended only by members of another race. You may obtain the applications for assignment and transfer at the Office of the Superintendent of Education of Montgomery County between June 21 and July 20, 1965, on Monday through Friday, from 8:30 A.M. to 5:00 P.M. You must complete, sign, and return the application to the Office of the Superintendent of Education on or before

July 20, 1965. It is not necessary for more than one parent to pick up, sign, or return the application.

All applications filed within the time and in the manner as stated above will be processed and acted on without discrimination as to the race of the applicants. You will be notified on or before August 17, 1965, whether your application has been accepted or rejected.

The Montgomery County Public School System is presently divided into elementary, junior high, and high school districts. (Copy Illegible.)

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It is the further ORDER of this Court that the Montgomery County Superintendent of Education shall direct the publication of the Notice set forth above, such notice being modified, however, to include the following paragraph in place of the last paragraph (regarding school districts) of the above Notice:

> In the event you have not already been notified of the school district in which you have your residence, you may obtain that information from the Office of the Superintendent of Education of Montgomery County when you pick up an application for assignment or transfer;

such notice to be published in a newspaper of general daily circulation in Montgomery County, Alabama, on June 13, June 20, and June 27, 1965.

It is the further ORDER of this Court that the Montgomery County Board of Education and the individual members thereof and the Montgomery County Superintendent of Education report to this Court in writing on or before 9:00 A.M., August 10, 1965, as to the action taken by the Montgomery County Board of Education and

Montgomery County Superintendent of Education on each application for transfer or assignment filed pursuant to the plan for desegregation as modified by this Order.

It is the further ORDER of this Court that the Montgomery County Superintendent of Education shall notify, in writing, the parents or the guardians of pupils for whom application for assignment or transfer has been made on or before August 17, 1965, as to the action taken by the said Montgomery County Superintendent of Education and the Montgomery County Board of Education on each application for transfer or assignment filed pursuant to the plan for desegregation as modified by this Order.

It is the further ORDER of this Court that the Montgomery County Board of Education and the individual members thereof and the Montgomery County Superintendent of Education, or their successors in office, file with this Court on or before January 14, 1966, their detailed plan for the operation of the Montgomery County Public School System commencing with the 1966-1967 school year; such plan to be designed to eliminate segregation of students based upon race and the complete elimination of the biracial school system within a reasonable time.

It is the further ORDER of this Court that jurisdiction of this cause be and the same is hereby specifically retained.

Done this 18th day of May, 1965.

FRANK M. JOHNSON, JR.
United States District Judge

Defendants' Report Pursuant to Order of May 18, 1965

(Filed August 9, 1965)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Come now the Defendants in the above entitled cause and, pursuant to this Court's Order dated May 18, 1965, file the following report as to the action taken by the Montgomery County Board of Education and the Montgomery County Superintendent of Education on each application for transfer or assignment filed pursuant to the plan for desegregation, as modified by order of this Court.

A total of forty-nine (49) applicants for transfer or assignment were received by the Montgomery County Board of Education on or before five o'clock p.m., July 20, 1965. These 49 applications were processed by the Board in accord with the Court's Order, without discrimination on the basis of race or color. As the result of the Defendants' compliance with the Court's Orders, eighteen applicants were accepted and thirty-one applicants were rejected, with grades 1, 2, 7, 9, 10, 11, and 12 all being desegregated.

These applicants are herein listed alphabetically with pertinent information considered by the Defendants in making their decision and the action taken by the Defendants.

1. *Bobbie Arrington,* 516 Troy Street, Montgomery, Alabama.

This applicant attended Carver Senior High School last year, completing the tenth grade and applied to attend Lanier High School, requesting admission to the eleventh grade.

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The applicant lives in Carver High School district and lives approximately six blocks from Lanier and approximately ten blocks from Carver Senior High School.

The parent and pupil have expressed a preference for the applicant to attend Lanier High School.

This applicant is admitted to the eleventh grade in Lanier High School.

2. *Sergeant Perry Austin,* 401 Troy Street, Montgomery, Alabama.

The applicant attended Carver Senior High School last year, completing the tenth grade and applied to attend Lanier High School this year, requesting admission to the eleventh grade. The applicant lives in the Carver High School district.

Applicant lives approximately six blocks from Lanier and approximately ten blocks from Carver.

The parent and the pupil have expressed a preference for the applicant to attend Lanier High School.

This applicant is admitted to the eleventh grade in Lanier High School.

3. *Woodrow Austin,* 401 Troy Street, Montgomery, Alabama.

The applicant attended Carver Elementary School last year, completing the sixth grade, and has applied to attend Lanier High School requesting admission to the seventh grade.

No seventh grade work is offered at Lanier High School. The Defendants denied this application.

4. *Gloria Jean Beamen,* Route 3, Box 417-T, Montgomery, Alabama.

The applicant attended Madison Park Elementary School last year, completing the sixth grade and applied to attend Capitol Heights Junior High School, requesting admission to the seventh grade.

No pupils, white or colored, who live along the Wetumpka Highway north of Kilby Prison attend Capitol Heights

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Junior High School and no Montgomery County school busses serve Capitol Heights Junior High School. Capitol Heights Junior High School is much more overcrowded than Booker Washington Junior High School.

Capitol Heights Junior High School is operating in excess of capacity with an anticipated 1075 pupils and a capacity of 952 pupils, while Booker Washington has not reached maximum capacity with an anticipated 796 pupils and a capacity of 812 pupils.

The Defendants denied this application.

5. *Eloise Boswell,* Route 3, Box 402-B, Montgomery, Alabama.

The applicant attended Madison Park Elementary School last year, completing the sixth grade and applied to attend Capitol Heights Junior High School, requesting admission to the seventh grade.

No pupils, white or colored, who live along the Wetumpka Highway north of Kilby Prison attend Capitol Heights Junior High School and no Montgomery County school busses serve Capitol Heights Junior High School. Capitol

Heights Junior High School is much more overcrowded than Booker Washington Junior High School.

Capitol Heights Junior High School is operating in excess of capacity with an anticipated 1075 pupils and a capacity of 952 pupils, while Booker Washington has not reached maximum capacity with an anticipated 796 pupils and a capacity of 812 pupils.

The Defendants denied this application.

6. *Johnnie Boswell,* Route 3, Box 402-B, Montgomery, Alabama.

The applicant attended Booker Washington Junior High School last year, completing the ninth grade and applied to attend Lee High School, requesting admission to the tenth grade.

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Senior high school pupils residing in the area of the applicant, which is a transported area, attend either Booker Washington or Lee Senior High Schools.

The parent and pupil have expressed a preference for the applicant to attend Lee High School.

This applicant is admitted to the tenth grade in Lee High School.

7. *Delores Rosetta Boyd,* 1007 South Holt Street, Montgomery, Alabama.

The applicant attended Loveless Junior High School last year, completing the ninth grade and applied to attend Lanier High School, requesting admission to the tenth grade.

The applicant lives in the middle of the Carver district and approximately fifteen blocks from Lanier and twelve blocks from Carver. The route from this applicant's home

to Lanier crosses several busy thoroughfares and will be more hazardous than the route to Carver where a tunnel is provided for students crossing Fairview Avenue.

Lanier High School will be the most overcrowded high school in the County this year as approximately twenty-seven hundred pupils are anticipated and the normal capacity of Lanier is two thousand. Lanier will have a higher pupil-teacher ratio than will Carver and will have to use all of its regular rooms each period and approximately fourteen makeshift rooms. The capacity at Carver High School has been greatly increased this year because of an addition of fourteen rooms which will be ready by the opening of school.

The Defendants denied this application.

8. *Janice Eileen Caple,* 2014 Wabash, Montgomery, Alabama.

The applicant attended the Alabama State Laboratory High School last year, completing the ninth grade, and applied to attend Lanier High School, requesting admission to the tenth grade.

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The applicant lives in the Carver district and lives adjacent to the campus of Carver High School and approximately fourteen blocks from Lanier. The route from the applicant's home to Lanier crosses several busy thoroughfares and is much more hazardous than the route to Carver. Lanier will be the most overcrowded high school in the County this year as approximately twenty-seven hundred pupils are anticipated and the normal capacity of Lanier High School is two thousand. Lanier will have a higher pupil-teacher ratio than will Carver, and Lanier will have to use all of its regular rooms each period and approxi-

mately fourteen makeshift rooms. An addition of fourteen rooms is being built at Carver High and will be ready for the opening of school.

The Defendants denied this application.

9. *Bertha Carol Campbell,* Route 3, Box 402, Montgomery, Alabama.

The applicant attended Booker Washington Junior High School last year, completing the ninth grade, and has applied to attend Lee High School, requesting admission to the tenth grade.

Senior high school pupils in the area of the residence of the applicant, which is a transported area, attend either Booker Washington or Lee Senior High Schools.

The parent and pupil have expressed a preference for the applicant to attend Lee High School.

This applicant is admitted to the tenth grade in Lee High School.

10. *Arlam Carr, Jr.,* 720 South Hall Street, Montgomery, Alabama.

The applicant attended Crosby High School, Waterbury, Connecticut last year, completing the ninth grade, and applied to attend Lanier High School, requesting admission to the tenth grade.

The applicant lives in the Booker Washington High School district and lives approximately three blocks from Booker Washington High School and approximately twenty-five blocks from Lanier. The route to Lanier crosses several busy thoroughfares and will be more hazardous than the route to Booker Washington.

Lanier will be the most overcrowded high school in the County this year as approximately twenty-seven hundred pupils are anticipated and the normal capacity of Lanier High School is approximately two thousand. Lanier will have a higher pupil-teacher ratio than will Booker Washington and will have to use all of its regular rooms each period and approximately fourteen makeshift rooms. The capacity at Booker Washington was greatly increased with the addition of fourteen rooms last year.

The Defendants denied this application.

11. *Esau Carter,* Route 3, Box 417-Y, Montgomery, Alabama.

The applicant attended Booker Washington Junior High School last year, completing the eighth grade, and applied to attend Capitol Heights Junior High School, requesting admission to the ninth grade.

No pupils, white or colored, who live along the Wetumpka Highway north of Kilby Prison attend Capitol Heights Junior High School. Capitol Heights Junior High School is much more overcrowded than Booker Washington Junior High School.

Capitol Heights Junior High School is operating in excess of capacity with an anticipated 1075 pupils and a capacity of 952 pupils, while Booker Washington has not reached maximum capacity with an anticipated 796 pupils and a capacity of 812 pupils.

The Defendants denied this application.

12. *Emma Jean Carter,* Route 3, Box 417-Y, Montgomery, Alabama.

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The applicant attended Booker Washington Senior High School last year, completing the eleventh grade and has

applied to attend Lee High School, requesting admission to the twelfth grade.

Senior high school pupils in the area of this applicant's residence, which is a transported area, attend either Booker Washington or Lee Senior High Schools.

The parent and the pupil have expressed a preference for the applicant to attend Lee High School.

This applicant is admitted to the twelfth grade in Lee High School.

13. *Linda Sue Cox,* Quarters 676-A, Maxwell Air Force Base, Alabama.

The applicant attended Maxwell Elementary School last year, completing the sixth grade, and has applied to attend Baldwin Junior High School, requesting admission to the seventh grade.

Most of the other children living on Maxwell Air Force Base attend Baldwin Junior High School.

The parent and pupil have expressed a preference for the applicant to attend Baldwin Junior High School.

This applicant is admitted to the seventh grade in Baldwin Junior High School.

14. *Belinda Joyce Green,* 3102 Tyler Road, Montgomery, Alabama.

This applicant applied to attend the first grade at Capitol Heights Elementary School.

The applicant lives approximately three miles from Capitol Heights Elementary School and there is no Montgomery County transportation to Capitol Heights Elementary School from this area. No pupils, white or colored, who live along the Lower Wetumpka Road attend Capitol Heights Elementary School.

The Defendants denied this application.

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15. *George Gregory Green, Jr.*, Route 5, Box 284, Montgomery, Alabama.

This applicant applied to attend the first grade at Capitol Heights Elementary School.

The father of the applicant was told verbally and it was printed on the application, that the birth certificate must accompany the completed applications for pupils applying to enter the first grade. This applicant was the only applicant for the first grade whose parents failed to turn in the birth certificate with the application. All pupils entering the first grade are required by law to present a birth certificate showing that they will be six on or before October 2, in order that they may enter school. This applicant has failed to meet this requirement.

The Defendants denied this application.

16. *Hattie Bell Harper*, Route 3, Box 405, Montgomery, Alabama.

The applicant attended Booker Washington Junior High School last year, completing the eighth grade, and has applied for attendance at Capitol Heights Junior High School, requesting admission to the ninth grade.

This applicant failed part of her work in the eighth grade and will have to take additional eighth grade work in order to become eligible for admission in the ninth grade. The eighth grade is not included in the plan as approved by this Court.

The Defendants denied this application.

17. *Ruth Evelyn Johnson*, Route 3, Box 400E, Montgomery, Alabama.

The applicant attended Booker Washington Junior High School last year, completing the ninth grade, and has applied to attend Lee High School, requesting admission to the tenth grade.

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Senior high school pupils in the area of the residence of this applicant, which is a transported area, attend either Booker Washington or Lee Senior High Schools.

The parent and the pupil have expressed a preference for the applicant to attend Lee High School.

This applicant is accepted for the tenth grade at Lee High School.

18. *Helen C. Jordan,* Route 3, Box 402-V, Montgomery, Alabama.

The applicant attended Booker Washington Senior High School last year, completing the eleventh grade and applied to attend Lee High School, requesting admission to the twelfth grade.

Senior high school pupils in the area of this applicant's residence, which is a transported area, attend either Booker Washington or Lee Senior High Schools.

The parent and the pupil have expressed a preference for the applicant to attend Lee High School.

The applicant is admitted to the twelfth grade in Lee High School.

19. *Aldenia Lewis,* 365 Kohn Street, Montgomery, Alabama.

The applicant attended Carver Junior High School last year, completing the ninth grade and applied to attend Lanier High School, requesting admission to the tenth grade.

The applicant lives in the Carver High School district approximately six blocks from Lanier and ten blocks from Carver.

The parent and pupil have expressed a preference for the applicant to attend Lanier High School.

This applicant is admitted to the tenth grade in Lanier High School.

20. *John Harrison McCain,* 2052 Stephens Street, Montgomery, Alabama.

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The applicant attended Carver Senior High School last year, completing the tenth grade and has applied to attend Lanier High School, requesting admission to the eleventh grade.

The applicant resides in the Carver district and lives approximately three blocks from Carver and fifteen blocks from Lanier. The route to Lanier crosses several busy thoroughfares and is more hazardous than the route to Carver where a tunnel is provided for children to cross Fairview Avenue. Lanier will be the most overcrowded high school in the County this year as approximately twenty-seven hundred pupils are anticipated and the normal capacity of Lanier High School is two thousand. Lanier will have a higher pupil-teacher ratio than will Carver, and Lanier will have to use all of its regular rooms each period and approximately fourteen makeshift rooms. An additional fourteen rooms are being built at Carver and will be ready for the opening of school.

The Defendants denied this application.

21. *Joan Mastin,* 726 Alexander Street, Montgomery, Alabama.

This applicant attended Carver High School last year, completing the tenth grade, and has applied to attend Lanier High School, requesting admission to the eleventh grade.

This applicant resides in the Carver district and lives approximately three blocks from Carver and twelve blocks from Lanier. The route to Lanier crosses several busy thoroughfares and is more hazardous than the route to Carver where a tunnel is provided for children to cross Fairview Avenue. Lanier will be the most overcrowded high school in the County this year as approximately twenty-seven hundred pupils are anticipated and a normal capacity of Lanier High School is two thousand. Lanier additional fourteen rooms are being built at Carver and will have a higher pupil-teacher ratio than will Carver, and Lanier will have to use all of its regular rooms each period and approximately fourteen makeshift rooms. An

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will be ready for the opening of school.

The Defendants denied this application.

22. *Yvonne Miles,* 199 John Morris Avenue, Montgomery, Alabama.

The applicant attended Hayneville Road Junior High School last year, completing the ninth grade and applied to attend Lanier High School, requesting admission to the tenth grade.

The applicant lives in the Carver transported area, however, there are pupils within a few blocks of the residence of this applicant who attend Lanier High School and furnish their own transportation.

The parent and pupil have expressed a preference for the applicant to attend Lanier High School.

This applicant is admitted to the tenth grade in Lanier High School, however, there will be no transportation furnished to Lanier High School because such transportation is not furnished for other students attending Lanier High School in the vicinity of the residence of the applicant.

23. *Horace Nettles, III,* Route 3, Box 402-TT, Montgomery, Alabama.

The applicant attended the Madison Park Elementary School last year, completing the sixth grade and applied to attend Capitol Heights Junior High School requesting admission to the seventh grade.

No pupils, white or colored, who live along the Wetumpka Highway north of Kilby Prison attend Capitol Heights Junior High School and no Montgomery County school busses serve Capitol Heights Junior High School. Capitol Heights Junior High School is much more overcrowded than Booker Washington Junior High School.

Capitol Heights Junior High School is operating in excess of capacity with an anticipated 1075 pupils and a capacity of 952 pupils, while Booker Washington has not reached maximum capacity with an anticipated 796 pupils and a capacity of 812 pupils.

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The Defendants denied this application.

24. *La Brenda Nettles,* Route 3, Box 402-TT, Montgomery, Alabama.

The applicant attended Booker Washington Junior High School last year, completing the ninth grade and applied to attend Lee High School, requesting admission to the tenth grade.

Senior high pupils in the area of the residence of this applicant, which is a transported area, attend either Booker Washington or Lee Senior High Schools.

The parent and pupil have expressed a preference for this applicant to attend Lee High School.

This applicant is admitted to the tenth grade in Lee High School.

25. *Patricia Lee Oliver,* 1116 Thurman Street, Montgomery, Alabama.

The applicant attended St. Jude School last year, completing the ninth grade and has applied to attend Lanier High School, requesting admission to the tenth grade.

This applicant lives in the Booker Washington High School district and lives approximately seventeen blocks from Lanier High School. The route to Lanier crosses several busy thoroughfares and will be more hazardous than the route to Booker Washington.

Lanier High School will be the most overcrowded high school in the County this year as approximately twenty-seven hundred pupils are anticipated and the normal capacity of Lanier High School is approximately two thousand pupils. Lanier will have a higher pupil-teacher ratio than will Booker Washington and will have to use all of its regular rooms each period and approximately fourteen makeshift rooms. The capacity of Booker Washington was greatly increased with the addition of fourteen rooms last year.

The Defendants denied this application.

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26. *Doris Jean Packs,* 401 Troy Street, Montgomery, Alabama.

This applicant attended Carver Elementary School last year, completing the sixth grade and applied to attend Lanier High School, requesting admission to the seventh grade.

No seventh grade work is offered at Lanier High School.

The Defendants denied this application.

27. *Mary Estella Perry,* 401 Troy Street, Montgomery, Alabama.

The applicant attended Carver Elementary School last year, completing the sixth grade and applied to attend Lanier High School requesting admission to the seventh grade.

No seventh grade work is offered at Lanier High School.

The Defendants denied this application.

28. *Minerva Elizabeth Relf,* Route 3, Box 405, Montgomery, Alabama.

This applicant attended Booker Washington Junior High School last year, completing the eighth grade and applied to attend Capitol Heights Junior High School, requesting admission to the ninth grade.

No pupils, white or colored, who live along the Wetumpka Highway north of Kilby Prison attend Capitol Heights Junior High School and no Montgomery County school busses serve Capitol Heights Junior High School. Capitol Heights Junior High School is much more overcrowded than Booker Washington Junior High School.

Capitol Heights Junior High School is operating in excess of capacity with an anticipated 1075 pupils and a capacity of 952 pupils, while Booker Washington has not reached maximum capacity with an anticipated 796 pupils and a capacity of 812 pupils.

The Defendants denied this application.

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29. *Jamal Sadler,* 1987 Upper Wetumpka Road, Montgomery, Alabama.

The applicant attended Houston Hill Junior High School last year, completing the eighth grade and applied to attend Capitol Heights Junior High School, requesting admission to the ninth grade.

This applicant lives in the Houston Hill Junior High School district, but lives a little closer to Capitol Heights Junior High School than to Houston Hill.

The parent and the pupil have expressed a preference for the applicant to attend Capitol Heights Junior High School.

This applicant is admitted to the ninth grade in the Capitol Heights Junior High School.

30. *Woodrow C. Sadler,* 1987 Upper Wetumpka Road, Montgomery, Alabama.

The applicant attended William Burns Paterson Elementary School last year, completing the fifth grade and applied to attend the Capitol Heights Elementary School, requesting admission to the sixth grade.

The sixth grade is not included in the desegregation plan as approved by this Court.

The Defendants denied this application.

31. *Earnestine Scales,* Route 3, Box 417-M, Montgomery, Alabama.

The applicant attended Booker Washington Junior High School last year, completing the seventh grade and applied to attend the Capitol Heights Junior High School, requesting admission to the eighth grade.

The eighth grade is not included in the desegregation plan as approved by this Court.

The Defendants deny this application.

32. *Melvin Scales,* Route 3, Box 417-M, Montgomery, Alabama.

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This applicant attended Madison Park Elementary School last year, completing the sixth grade and applied to attend Capitol Heights Junior High School, requesting admission to the seventh grade.

No pupils, white or colored, who live along the Wetumpka Highway, north of Kilby Prison attend Capitol Heights Junior High School and no Montgomery County school busses serve Capitol Heights Junior High School. Capitol Heights Junior High School is much more overcrowded than Booker Washington Junior High School.

Capitol Heights Junior High School is operating in excess of capacity with an anticipated 1075 pupils and a capacity of 952 pupils, while Booker Washington has not reached maximum capacity with an anticipated 796 pupils and a capacity of 812 pupils.

The Defendants denied this application.

33. *Emma Jean Scott,* 1606 Goode Street, Montgomery, Alabama.

This applicant attended Carver Junior High School last year, completing the ninth grade and applied to attend Lanier High School, requesting admission to the tenth grade.

This applicant lives in the Carver High School district, but lives about three blocks from Lanier and ten blocks from Carver.

The parent and pupil have expressed a preference for this applicant to attend Lanier High School.

This applicant is admitted to the tenth grade in Lanier High School.

34. *Betty Jean Scott,* Route 3, Box 417-L, Montgomery, Alabama.

This applicant attended Madison Park Elementary School last year, completing the sixth grade and applied to attend the Capitol Heights Junior High School, requesting admission to the seventh grade.

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No pupils, white or colored, who live along the Wetumpka Highway north of Kilby Prison attend Capitol Heights Junior High School and no Montgomery County school busses serve Capitol Heights Junior High School. Capitol Heights Junior High School is much more overcrowded than Booker Washington Junior High School.

Capitol Heights Junior High School is operating in excess of capacity with an anticipated 1075 pupils and a capacity of 952 pupils, while Booker Washington has not reached maximum capacity with an anticipated 796 pupils and a capacity of 812 pupils.

The Defendants denied this application.

35. *Bill Scott,* Route 3, Box 417-L, Montgomery, Alabama.

This applicant attended Booker Washington Junior High School last year in the seventh grade and applied to attend Capitol Heights Junior High School, requesting admission to the seventh grade.

No pupils, white or colored, who live along the Wetumpka Highway north of Kilby Prison attend Capitol Heights

Junior High School and no Montgomery County school busses serve Capitol Heights Junior High School. Capitol Heights Junior High School is much more overcrowded than Booker Washington High School.

Capitol Heights Junior High School is operating in excess of capacity with an anticipated 1075 pupils and a capacity of 952 pupils, while Booker Washington has not reached maximum capacity with an anticipated 796 pupils and a capacity of 812 pupils.

The Defendants denied this application.

36. *Sheryl D. Seay,* Route 3, Box 404-A, Montgomery, Alabama.

This applicant attended Carver Elementary School last year, completing the sixth grade and applied to attend Capitol Heights Junior High School, requesting admission to the seventh grade.

No pupils, white or colored, who live along the Wetumpka Highway north of Kilby Prison attend Capitol Heights Junior High School and no Montgomery County school busses serve Capitol Heights Junior High School. Capitol Heights Junior High School is much more overcrowded than Booker Washington Junior High School.

Capitol Heights Junior High School is operating in excess of capacity with an anticipated 1075 pupils and a capacity of 952 pupils, while Booker Washington has not reached maximum capacity with an anticipated 796 pupils and a capacity of 812 pupils.

The Defendants denied this application.

37. *Jerry W. Taylor, Jr.,* 2733 First Street, Montgomery, Alabama.

This applicant attended Carver High School last year, completing the tenth grade and applied to attend Lanier High School, requesting admission to the eleventh grade.

Senior high school pupils in the area of the residence of this applicant, which is a transported area, attend either Carver or Lanier Senior High School.

The parent and pupil have expressed a preference for this applicant to attend Lanier High School.

This applicant is admitted to the eleventh grade in Lanier High School.

38. *Sandra Lynn Taylor,* Route 3, Box 402-W, Montgomery, Alabama.

This applicant attended Booker Washington High School last year, completing the eleventh grade and has applied to attend Lee High School, requesting admission to the twelfth grade.

Senior high school pupils in the area of the residence of this applicant, which is a transported area, attend either Booker Washington or Lee Senior High Schools.

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The parent and pupil have expressed a preference for the applicant to attend Lee High School.

This applicant is admitted to the twelfth grade in Lee High School.

39. *Robert Taylor, III,* Route 3, Box 402-W, Montgomery, Alabama.

This applicant attended Booker Washington High School last year, completing the tenth grade and applied to attend Lee High School this year, requesting admission to the eleventh grade.

Senior high school pupils in the area of the residence of this applicant, which is a transported area, attend either Booker Washington or Lee Senior High Schools.

The parent and the pupil have expressed a preference for this applicant to attend Lee High School.

This applicant is admitted to the eleventh grade in Lee High School.

40. *Willis Tolliver, Jr.,* 1985 Upper Wetumpka Road, Montgomery, Alabama.

This applicant attended Booker Washington Senior High School the year before last and was at that time in the twelfth grade. The applicant has applied to attend Lee High School, requesting admission to the twelfth grade.

According to the father of this applicant, he went back to Booker Washington last year and only stayed a few weeks before dropping out in November to go to work. This applicant's records show that he was nineteen years of age in July and has passed only half of some courses (one semester) and during his last school attendance was taking some tenth, eleventh and twelfth grade courses.

The applicant lives in the Booker Washington School district and the Board feels that it would be better for him to return to Booker Washington to complete the courses which he had started there.

The Defendants denied this application.

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41. *Myrtis Vinson,* 351 Auburn Street, Montgomery, Alabama.

This applicant attended Carver High School last year, completing the tenth grade and applied to attend Lanier High School, requesting admission to the eleventh grade.

This applicant lives in the Carver High School district. The applicant lives approximately five blocks from Lanier and ten blocks from Carver.

The parent and the pupil have expressed a preference for the applicant to attend Lanier High School.

This applicant is admitted to the eleventh grade in Lanier High School.

42. *Lennon Whitlow, Jr.*, Route 3, Box 403-F, Montgomery, Alabama.

This applicant attended Booker Washington High School last year as an irregular student and has applied to attend Lee High School, requesting admission to the twelfth grade.

This applicant has not completed some of his junior high school work. No junior high school work is offered at Lee High School. The applicant, when attending Booker Washington High School will be able to make up the necessary junior high school work in the adjacent junior high school building.

The Defendants denied this application.

43. *Andrew Russell Whitlow*, Route 3, Box 403-F, Montgomery, Alabama.

This applicant attended Booker Washington Junior High School last year in the ninth grade and applied to attend Lee High School requesting admission to the tenth grade. This applicant has not completed all of his ninth grade work and no ninth grade work is offered at Lee. This applicant, when attending Booker Washington High School, will be able to make up the necessary ninth grade work in the adjacent junior high school building.

The Defendants denied this application.

44. *Major Eugene Whitlow,* Route 3, Box 403-F, Montgomery, Alabama.

This applicant attended Booker Washington Junior High School last year in the ninth grade and applied to attend Lee High School, requesting admission to the tenth grade.

This applicant has not completed all of his junior high school work and no junior high school work is offered at Lee High School. This applicant, when attending Booker Washington High School, could make up the necessary junior high school work in the adjacent junior high school building.

The Defendants denied this application.

45. *Walter Jerome Whitlow,* Route 3, Box 403-F, Montgomery, Alabama.

This applicant attended Booker Washington Junior High School last year completing the eighth grade, and applied to attend Capitol Heights Junior High School, requesting admission in the ninth grade.

No pupils, white or colored, who live along the Wetumpka Highway north of Kilby Prison attend Capitol Heights Junior High School and no Montgomery County school busses serve Capitol Heights Junior High School. Capitol Heights Junior High School is much more overcrowded than Booker Washington High School.

Capitol Heights Junior High School is operating in excess of capacity with an anticipated 1075 pupils and a capacity of 952 pupils, while Booker Washington has not reached maximum capacity with an anticipated 796 pupils and a capacity of 812 pupils.

The Defendants denied this application.

46. *Shirley Ann Whitlow,* Route 3, Box 403-F, Montgomery, Alabama.

This applicant attended Madison Park Elementary School last year in the sixth grade and applied to attend Capitol Heights Junior High School, requesting admission to the seventh grade.

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No pupils, white or colored, who live along the Wetumpka Highway north of Kilby Prison attend Capitol Heights Junior High School and no Montgomery County school busses serve Capitol Heights Junior High School. Capitol Heights Junior High School is much more overcrowded than Booker Washington Junior High School.

Capitol Heights Junior High School is operating in excess of capacity with an anticipated 1075 pupils and a capacity of 952 pupils, while Booker Washington has not reached maximum capacity with an anticipated 796 pupils and a capacity of 812 pupils.

The Defendants denied this application.

47. *L. W. Williams, Jr.,* Route 3, Box 417-P, Montgomery, Alabama.

This applicant attended Booker Washington Junior High School last year, completing the ninth grade and has applied to attend Lee High School this year, requesting admission to the tenth grade.

Senior high school pupils in the area of this applicant's residence, which is a transported area, attend either Booker Washington or Lee Senior High Schools.

The parent and pupil have expressed a preference for this applicant to attend Lee High School.

This applicant is admitted to the tenth grade in Lee High School.

48. *Clemmie Williams,* Route 3, Box 417-P, Montgomery, Alabama.

This applicant attended Booker Washington Junior High School last year, completing the seventh grade and applied to attend Capitol Heights Junior High School, requesting admission to the eighth grade.

The desegregation plan as approved by this Court does not include the eighth grade.

The Defendants denied this application.

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49. *Jeffrey Williams,* Route 3, Box 417-P, Montgomery, Alabama.

This applicant attended Booker Washington Junior High School last year, completing the seventh grade and applied to attend Capitol Heights Junior High School, requesting admission to the eighth grade.

The eighth grade is not included in the desegregation plan as approved by this Court.

The Defendants denied this application.

Submitted this 9th day of August, 1965.

HILL, ROBISON AND BELSER
Attorneys for Defendants.

Certificate of Service (omitted in printing)

Order as to Filing Objections

(Filed August 16, 1965)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

The objections, if any, to the action taken by the Montgomery County Board of Education and the Montgomery County Superintendent of Education, pursuant to the order of this Court as that action is reflected in the report of the Montgomery County Board of Education and the Montgomery County Superintendent of Education filed herein on August 9, 1965, are ORDERED to be filed with this Court on or before August 24, 1965.

It is further ORDERED that any objections to said action as taken by the Montgomery County Board of Education and the Montgomery County Superintendent of Education as that action is reflected in the report filed August 9, 1965, be and the same are set for a hearing to commence at 2 p.m., August 26, 1965, in the United States District Courtroom, Montgomery, Alabama.

Done, this the 16th day of August, 1965.

FRANK M. JOHNSON, JR.
United States District Judge

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Notice of Taking Depositions

(Filed August 19, 1965)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

HON. BEN HARDEMAN,
U. S. Attorney
Post Office Building
Montgomery, Alabama

HON. JOHN DOAR,
U. S. Attorney
HON. JONATHAN B. SUTIN
United States Department of Justice
Washington, D. C.

HILL, ROBISON & BELSER
Attorneys and Counsellors At Law
26 South Perry Street
Montgomery, Alabama

WALTER MCKEE,
Superintendent
Montgomery County Schools
305 South Lawrence Street
Montgomery, Alabama

PLEASE TAKE NOTICE that the Plaintiffs, on the 23rd day of August, 1965 in the Office of Mr. W. H. Lewis, third

floor, Montgomery County Courthouse, Montgomery, Alabama, at 2:30 P. M., will take the deposition of Mr. Walter McKee, Superintendent of Schools of Montgomery County, Alabama, upon oral examination, pursuant to Federal Rules of Civil Procedure before Mr. W. H. Lewis, a notary public, or some other officer authorized by law to administer oaths.

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PLEASE TAKE FURTHER NOTICE that you are hereby required to produce upon such examination all records, tests, individual files and all other documents used by the Montgomery County Board of Education in acting upon the Applications for Transfer, a report of the action of said Board was filed in this case on the 9th day of August, 1965.

Done this 19th day of August, 1965.

FRED D. GRAY
JACK GREENBERG
CHARLES H. JONES, JR.
Attorneys for Plaintiffs

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Objections to Defendants' Rejection of Applicants for Transfer

(Filed August 24, 1965)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Now come the Plaintiffs in the above entitled cause, by and through their attorney of record, and object to the denial of the applications for transfer as set out in defendants' report to this court dated August 9, 1965, and as grounds for said objection assign separately and severally to each application for transfer the following:

1. That no valid reasons are assigned for the denial of said applications for transfer.

2. That no valid criteria are given for denying the applications for transfer.

3. That in processing and refusing to approve the applications for transfer and assignment, the defendants have subjected these Negro pupils to procedures and investigations which white children desiring to transfer from one white school to another are not subjected to, and to procedures and investigations which other Negro children desiring to transfer from one Negro school to another Negro school are not subjected to.

4. That in refusing to approve the applications for transfer and assignment, the defendants have denied to

plaintiffs and their class their constitutional right to receive an education on a non-discriminatory basis.

5. The defendants in failing to approve the other applications seek to only have token desegregation in the public schools of Montgomery County and to circumvent

this court's decree in this case and in the case of *Brown* vs. *Board of Education*, 347, U. S. 483, 98 L. Ed. 873, 74 S. Ct. 686.

6. The criteria used by the Board were not uniformly applied to all students in making initial assignments to the Montgomery County Public Schools; that the criteria were instead applied solely to students seeking transfer from "Negro" to "white" schools; and that such application of the criteria denies Negro students equal protection of the laws secured to them under the Fourteenth Amendment of the United States Constitution as interpreted in decisions of both the Fifth Circuit Court and the United States Supreme Court.

7. Petitioners further allege that the rejected applicants have not been apprised of the standards and criteria of which formed the bases for the defendants' denial of the aforesaid applications.

8. Petitioners further allege that the action of the defendant, Montgomery County Board of Education, as shown in its report filed with the court on August 9, 1965, does not comply with the Order of this court dated May 18, 1965, which said Order approved said defendant's amended plan for desegregation.

9. Petitioners further allege that the action of the defendant, Montgomery County Board of Education, as shown in its report filed with the court on August 9, 1965, does not comply with said defendant's amended plan for desegregation.

10. The Alabama Pupil Placement Act has been unconstitutionally applied and therefore cannot properly be considered in determining pupil transfer applications.

11. The Board's report submitted fails to provide for either complete "free choice" throughout the system without limitation of the Pupil Placement Act, or for the abolition of dual zones in making initial assignments in the elementary, junior high, and high school grades. The Board should be required to replace the system of dual zone assignments with single geographic zones for all schools in the system, thereafter assigning, initially, all students residing in a zone without regard to race until

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capacity is reached.

12. The Board's present report is further objectionable because it fails to provide for desegregation of teachers, principals, and other administrative or educational staff personnel.

13. Defendants' report reflects that the criteria of the Pupil Placement Law have been applied so as to limit desegregation through restriction of the applicants' rights to free choice. (See Section V. D. 11., General Statement of Policies Under Title VI of the Civil Rights Act of 1964 Respecting Desegregation of Elementary and Secondary

Schools, HEW, Office of Education, April 1964. Appendix.; see also, *Singleton* v. *Jackson Municipal Separate School District,* Fifth Circuit, No. 22527, 6/22/65; *Price* v. *Denison Independent School District,* Fifth Circuit, No. 21632, 7/2/65).

14. Because initial assignments to Junior High School and High School grades have been made on a racial basis, overcrowding in presently "white" schools has prevented applicants from exercising an effective free choice in the selection of a school, and also, unconstitutionally retarded the desegregation of several grades reached by defendants' plan.

15. The action of defendants as reflected by their report, violates plaintiffs' rights to attend schools in a desegregated system, in that the Board's action is taken in the context of a dual or segregated system of schools, which the board has not yet undertaken to abolish.

16. Applicants Austin (3), and Packs (26), should be allowed to apply to the closest school having a Seventh grade, which may be attended by pupils other than those of the race of the applicants.

17. Applicants Beamen (4), Boswell (5), Carter (11), Green (14), Nettles (23), Relf (28), Scales (32), Scott (34, 35), Seay (36), Whitlow (45, 46), all of whom applied to Capital Heights Junior High School have, in part, been denied an effective choice because initial assignments to said school have been made on a racial basis, thereby so limiting the available space that Negro pupils, residing closer to the school, are unable to effect transfer and hence desegregation.

18. The defendants can not use the overcrowding in white school as a valid reason for failing to accept Negro students in that the overcrowdedness is the direct consequences of a "feeder system" which system is based on race.

19. The defendants have assign as one of the reasons for failing to admit Negro students to white schools the fact that the route to the white school is more hazardous than the route to the Negro school. This is not a valid criteria for denying Negro applicants in that white children must cross equally as hazardous streets in route from their home to the white school.

20. The report shows on its face that the defendants are not making a good-faith effort to comply with the court's orders that, therefore, the court should reject that portion of the report which deny the applications for transfer.

WHEREFORE plaintiffs pray that the court will promptly set a hearing on plaintiffs' objections to the board's report and that upon such a hearing the court will enter an order:

1. Declaring that the Alabama Pupil Placement Law as applied to the applicants who were denied transfer unconstitutional and therefore null and void.

2. Directing the defendants to cease using the Alabama Pupil Placement Law in acting upon applicants for transfer.

3. Directing the defendants to permit the applicant, George Gregory Green, Jr. (15), to submit to the defendants his birth certificate and if said birth certificate shows that he will be six years old by the 2nd day of October,

1965, admit said applicant to Capitol Heights Elementary School.

4. Directing defendants to consider the applications of applicants Woodrow Austin (3), and Doris Jean Packs (26) to the closest school to their home having a seventh grade, which may be attended by pupils other than those of the race of the applicants.

5. Directing defendants to consider the applications of Gloria Jean Beamen (4), Eloise Boswell (5), Esau Carter (11), Belinda Joyce Green (14), Horace Nettles, III (23),

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Minerva Elizabeth Relf (28), Melvin Scales (32), Betty Jean Scott (34), Bill Scott (35), Sheryl D. Seay (36), Walter Jerome Whitlow (45), and Shirley Ann Whitlow (46), who had applied to Capital Heights Junior High School as applicants to Baldwin Junior High School or the junior high school which the white children in that community now presently attend; and after the defendants have considered said applications to said school to act favorably there upon.

6. Directing the defendants to approve all of the applications for transfer.

Plaintiffs further pray for such further relief as may be proper in the premises.

Respectfully submitted,

GRAY & SEAY
JACK GREENBERG
CHARLES JONES, JR.

Certificate of service (omitted in printing)

APPENDIX

GENERAL STATEMENT OF POLICIES UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 RESPECTING DESEGREGATION OF ELEMENTARY AND SECONDARY SCHOOLS

I. Applicability of Title VI of the Civil Rights Act of 1964 to Desegregation of Elementary and Secondary Schools

Title VI of the Civil Rights Act prohibits the extension of Federal financial assistance to any dual or segregated system of schools based on race, color, or national origin. To be eligible to receive, or to continue to receive such assistance, school officials must eliminate all practices characteristic of such dual or segregated school systems.

II. Methods of Compliance—General

Elementary and secondary schools or school systems may qualify for Federal financial assistance by:

A. Executing an Assurance of Compliance (HEW Form 441), if the requirements specified in III below are satisfied; or

B. Submitting a final order of a court of the United States for the desegregation of the school or school system which satisfies the requirements specified in IV below, together with an Initial Compliance Report (see VI below); or

C. Submitting a plan for the desegregation of the school system which the Commissioner of Education determines is adequate to accomplish the purposes of the Civil Rights Act, as set forth in these policies (see V below); together with an Initial Compliance Report (see VI below); and

D. Implementing the Assurance, final court order or desegregation plan in good faith so as to effectuate the basic objective set forth in section 601 of Title VI of the Civil Rights Act:

> "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

III. Methods of Compliance—Assurance of Compliance (HEW Form 441)

An Assurance of Compliance (HEW Form 441) that will qualify a school system for Federal financial assistance may not be executed by a school system in which:

A. The race, color, or national origin of pupils is a factor in their initial assignment, reassignment, or transfer to a particular school or class within a school; or

B. Teachers or other staff who serve pupils remain segregated on the basis of the race, color, or national origin of the pupils in a school; or

C. Any activity, facility or other service, including transportation, provided or sponsored by a school system is segregated on the basis of race, color, or national origin; or

D. There remain any other practices characteristic of dual or segregated school systems.

IV. Methods of Compliance—Court Orders

A. A school system subject to a final order of a court of the United States will be eligible for Federal financial assistance only if the order directs desegregation of the school system; it does not suffice if the order merely directs school authorities to admit certain named persons or otherwise fails to require the elimination of a dual or segregated system of schools based on race, color, or national origin.

B. School districts submitting a final court order should send official copies of the court order, together with an Initial Compliance Report as described in VI below, indicating the present state of compliance with the order and the school district's program for continued compliance.

V. Methods of Compliance—Plans for the Desegregation of School Systems

A. *Types of Desegregation Plans.*

A school system will be eligible for Federal financial assistance by submitting a desegregation plan providing for the assignment, reassignment, and transfer of pupils to or within schools on the basis of:

1. Geographic attendance areas, subject to the requirements of sections B and C below;

2. Freedom of choice granted to and exercised by the pupil and his parents or guardians, subject to the requirements of sections B and D below; or

3. A combination of geographic attendance areas and freedom of choice.

B. *Requirements Which All Desegregation Plans Must Satisfy.*

1. *Faculty and staff desegregation.* All desegregation plans shall provide for the desegregation of faculty and staff in accordance with the following requirements:

a. *Initial assignment.* The race, color, or national origin of pupils shall not be a factor in the assignment to a particular school or class within a school of teachers, administrators or other employees who serve pupils.

b. *Segregation resulting from prior discriminatory assignments.* Steps shall also be taken toward the elimination of segregation of teaching and staff personnel in the schools resulting from prior assignments based on race, color, or national origin (see E4b below).

2. *Nondiscrimination in other school affiliated services, facilities, activities and programs.* All desegregation plans shall provide for the elimination of discrimination based on race, color, or national origin, with respect to services, facilities, activities and programs sponsored by or affiliated with the schools of the system. If busing or other transportation is furnished or sponsored by the school or school system, the plan shall call for its provision without discrimination based on race, color, or national origin.

3. *Preparation of pupils, teachers, staff and community for desegregation.* All desegregation plans shall contain specific information as to actions that will be taken to prepare pupils, teachers, staff personnel and the community for the changes which will be involved in desegregating the school system.

4. *Notice.*

a. All desegregation plans shall provide for their publication in a conspicuous manner in a newspaper having general circulation in the geographic area served by the school system, reasonably in advance of the time for any action which may be taken by pupils under the plan;

b. All desegregation plans shall provide for notification to pupils currently enrolled in the school system and to their parents or guardians in sufficient time to enable them to understand and take advantage of their rights to initial assignment, reassignment or transfer for the coming school year, and for the mailing of such notices to parents or guardians of pupils then enrolled or for their distribution in any other manner that will assure their receipt by parents or guardians;

c. All desegregation plans shall be accompanied by sample copies of the notices to be given respecting each of the following categories:

(1) The initial assignment of pupils intending to enter schools of the system for the first time;

(2) Initial assignment of pupils intending for the first time to enter a school of higher level after having completed a school of less advanced level; and

(3) The reassignment or transfer of pupils for the forthcoming school year.

5. *Subsequent court orders.* If, after submission of a desegregation plan, a final order of a court of the United States is entered calling for the desegregation of the school or school system covered by the plan, the plan shall be revised, if necessary, to meet the requirements of the court order and of any future modification of the order.

6. *Performance as a test of plan.* The Commissioner of Education may from time to time redetermine the adequacy of any desegregation plan to accomplish the purposes of the Civil Rights Act.

C. *Plans Based on Geographic Attendance Areas.* A desegregation plan which proposes to assign, reassign or transfer pupils on the basis of geographic attendance areas shall contain provisions that will meet the following requirements as to all grades covered by geographic zoning:

1. *Attendance zones.* Racially separate attendance zones shall be abandoned entirely and each attendance zone shall be part of a single, nonracial system of attendance zones. Zone lines shall be drawn to follow the natural boundaries or perimeters of compact areas surrounding particular schools.

2. *Initial assignment.* All pupils shall be initially assigned to the school for the geographic attendance zone in which they reside.

3. *Attendance outside zone of residence.* The rules or practices under which pupils are reassigned or permitted to transfer to a school outside their zone of residence shall not take race, color, or national origin into account.

4. *Right to attend in zone of residence.* At the beginning of any school year any pupil attending a school outside his zone of residence shall have the right to transfer to and attend the school in his zone of residence.

5. *Notice.* Each pupil and his parents or guardians shall receive notice of the school to which the pupil is assigned which satisfies the requirements of B4 above.

D. *Plans Based on Freedom of Choice.*

The responsibility to eliminate segregation rests with the school authorities and is not satisfied by rules and practices which shift the burden of removing discrimination to the class or classes of persons previously discriminated against. Desegregation of a school system may, however, be initiated by a "free choice" plan containing provisions that will meet the following requirements as to all grades covered by free choice:

1. *Adequate opportunity to make a choice.* No pupil shall be assigned, reassigned or transferred without being given once annually, at an appropriate time, an adequate prior opportunity to make an effective choice of school.

2. *Pupil placement laws.* The criteria of pupil placement laws or similar statutes rules or practices shall not be used to limit desegregation through restriction of any pupil's right to free choice.

3. *Initial assignment: lowest elementary grade levels.*

a. Announcement of the procedures for initial assignment of pupils to the lowest elementary grade level (including preschool and kindergarten classes where available) shall be made by full notice in the press.

b. The times and places for, and manner of, preregistration and enrollment shall be fixed so that a free choice may be made easily by each pupil.

c. If overcrowding will result at a particular school from the choices made, initial assignment shall be made either by giving preference to the pupils residing closest to the school or on the basis of non-racial attendance zones. If no choice is made, they shall be assigned to the school nearest their homes or on the basis of non-racial attendance zones.

4. *Initial assignment: lowest grade of junior high, high or other school above elementary level.*

a. Announcement of the initial assignment of pupils to the lowest grade of junior high, high or other school above the elementary level shall be made by individual notices to each pupil and his parents or guardians. The notices shall be furnished reasonably in advance (as specified in the plan) of the time for filing the form for exercising choice of the school next to be attended, together with copies of the form. Copies of the notice and the form shall be submitted together with the plan.

b. If overcrowding will result at a particular school because of the choices made, initial assignments shall be made either by giving preference to the pupils residing closest to such school or on the basis of non-racial attendance zones.

c. Pupils may either be required to make a choice of schools or be initially assigned, if they do not make a choice, to the school nearest their homes, or on the basis of non-racial attendance zones.

5. *Reassignment or transfer: all other grades to which freedom of choice policy applies.*

a. In all other grades to which the freedom of choice policy applies, every pupil shall be informed by individual notice addressed to himself and his parents or guardians: (1) of his right to transfer to a school of his choice, and (2) where copies of the form for exercising this transfer right may be readily obtained in the school and elsewhere.

b. If overcrowding will result at a particular school because of the choices made, the pupil shall either be given preference over pupils residing farther from the school or shall be permitted to attend another school of his choosing within a reasonable distance of his residence.

6. *Initial assignment: pupils entering school system for first time or who become eligible to attend some other school in the system by reason of change of residence.* Any pupil who either enters the school system for the first time or becomes eligible to attend some other school in the system by reason of a change of residence shall be initially assigned without regard to race, color, or national origin.

7. *Transportation.* The exercise of free choice shall not be restricted by transportation practices. Transportation shall be provided to pupils under a free choice policy on the same basis as it is provided to other pupils attending the same school.

8. *Notice.* All notices to pupils and their parents or guardians respecting the initial assignment, reassignment or transfer to or within schools shall:

a. State simply and clearly the applicable rules and administrative practices regarding the rights which the desegregation plan accords pupils with respect to initial assignment, reassignment, or transfer, to or within the schools;

b. Give the times, dates, and places at which pupils, or their parents or guardians may exercise their rights under the desegregation plan; and

c. Include an assurance that school personnel will neither favor nor penalize any pupil because of the choice he makes in the exercise of his rights under the desegregation plan.

E. *Rate of Desegregation.*

1. Every school system which submits a plan that fails to provide for the desegregation of every grade in all the schools within its system by the beginning of the school year 1965–1966 must sustain the burden of justifying the delay and must include in its desegregation plan a time schedule for such desegregation.

2. The fall of 1967 is set as the target date for the extension of desegregation to all grades of school systems not fully desegregated in 1965–1966 as a qualification for Federal financial assistance.

3. On or before January 31, 1966, the Commissioner of Education may modify the policies respecting desegregation of elementary and secondary schools in order to determine eligibility for Federal financial assistance in the 1966–1967 school year and thereafter.

4. Every school system beginning desegregation must provide for a substantial good faith start on desegregation starting with the 1965–1966 school year, in light of the 1967 target date.

a. Such a good faith start shall normally require provision in the plan that:

(1) Desegregation will be extended to at least four grades for the 1965–1966 school year; the grades covered must include the first and any other lower grade, the first and last high school grades, and the lowest grade of junior high where schools are so organized;

(2) Any pupil newly enrolled in the school system or in any school within the system (e.g., who has newly established a residence within the district) shall be enrolled in and assigned to a particular school without regard to race, color, or national origin;

(3) No pupil shall be publicly supported in a school outside the school district unless such support is available without regard to race, color, or national origin to all pupils residing in the school district; and in any case no student shall be required to attend a school outside the school district in order to maintain racial segregation or minimize desegregation in a school within the district;

(4) Any pupil attending a school to which he was originally assigned on the basis of his race, color, or national origin shall have the right, irrespective of whether or not the grade he is attending has been desegregated, to transfer to another school in order to take a course of study for which he is qualified and which is not available in the school he is attending;

(5) Any student attending any grade, whether or not fully desegregated, at a school to which he originally was assigned on the basis of his race, color, or national origin shall have an opportunity, subject to the requirements and criteria applicable equally to all students without regard to

race, color, or national origin to transfer to any other school in which he originally would have been entitled to enroll but for his race, color, or national origin; and

(6) Steps will be taken for the desegregation of faculty, at least including such actions as joint faculty meetings and joint inservice programs.

b. In exceptional cases the Commissioner may, for good cause shown, accept plans which provide for desegregation of fewer or other grades or defer other provisions set out in 4a above for the 1965–1966 school year, provided that desegregation for the 1965–1966 school year shall extend to at least two grades, including the first grade, and provided that the school districts, in such case, shall take into account the steps which would be required to meet the 1967 target data.

VI. Compliance Reports

A. *General Requirements.* All recipients of Federal financial assistance are subject to the requirements respecting compliance information set forth in section 80.6 of the Departmental Title VI Regulations.

B. *Initial Compliance Report.* If an Initial Compliance Report is required, it shall contain sufficient detailed information to provide an accurate picture of past and present racial conditions in each school district. Precise, up-to-the-minute statistics are not required. The material furnished should be what fair-minded school officials believe to be true and what reasonable men would think necessary for a rational appraisal of racial practices in the system. The following list, not intended to be exclusive, suggests the kinds of information that should be covered by an Initial Compliance Report:

1. A racial breakdown of the school-age population residing in the district by attendance zone;

2. The racial distribution of pupils, by school, throughout the system;

3. The racial distribution of teaching and staff personnel, by school, throughout the system;

4. Maps, which need not be of professional quality, where useful or necessary to demonstrate such things as school locations, attendance zones, or school bus routes;

5. Past and present rules and practices for the initial assignment, reassignment, and transfer of pupils within the system; and

6. The status of appeals or other pending proceedings, if any, if a court order for desegregation is submitted.

C. *Subsequent Compliance Reports.* Subsequently submitted compliance reports may refer to previous reports and should report with the same scope and detail on developments since the last previous report.

VII. Definitions—Initial Assignment, Reassignment and Transfer

As used herein:

A. The term *initial assignment* means the assignment to a particular school in the school system of any pupil who:

1. Is to attend preschool, kindergarten, or first grade; or

2. For the first time enters a school of higher level (such as junior high or high school) after having completed a school of less advanced level; or

3. For the first time enters the school system at any level; or

4. Becomes eligible, or would become eligible, aside from considerations of race, color, or national origin, to attend some other school in the school system by reason of a change of residence.

B. The term *reassignment* means the assignment of a pupil to the school he currently attends for an additional period of time.

C. The term *transfer* means the assignment of a pupil to a school of the same level other than the one he currently attends (e.g., transfer from one elementary school to another).

VIII. Alternative Administrative Procedures

If an administrative procedure provided for herein is not administratively feasible in a particular situation, the Commissioner may accept an alternative procedure if he determines that it will accomplish the same purpose.

April, 1965.

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Objections of Amicus Curiae to Defendants' Rejection of Applicants for Transfer

(Filed August 24, 1965)

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

The United States of America, as Amicus Curiae herein, does not object to the action taken by the Montgomery County Board and Superintendent of Education in rejecting the applications of Negro students for transfer where the grade to which the transfer is requested is not included in the Court's orders of July 31, 1964, and May 18, 1965.

The United States otherwise objects to the action taken by the Montgomery County Board and Superintendent of Education, as indicated in their report to the Court dated August 9, 1965, rejecting 31 out of 49 applications made by Negro students for transfer and assignment for the coming school term, September 1965.

The United States objects to the rejection of George Gregory Green, Jr. for enrollment in the first grade in that the failure of his parents to provide a birth certificate to the School Board is not sufficient reason for arbitrarily assigning him to a Negro school.

The United States objects to the rejection of the other Negro students listed in the report to the Court for the following reasons:

(a) The imposition of any restricting criteria in acting upon applications of Negro students for transfer and as-

signment tends to perpetuate assignments which were originally based on race.

(b) The limited capacity of a school to which transfer is sought cannot be used to deny applications submitted by Negro students unless white students who attend that school live closer than the Negro students requesting transfer

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thereto. Prior assignments to schools, based on race, should not be considered in determining priority in Negro applicants and white students.

(c) The Negro students who requested assignment to schools which do not provide the grade level work required by those students were not given an opportunity to make a second choice.

CHARLES W. QUAINTANCE
Attorney
Department of Justice

Certificate of Service (omitted in printing)

Order

(Filed August 27, 1965)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Pursuant to the order of the Court made and entered herein on August 16, 1965, the objections of the United States and the plaintiffs to the action taken by the Montgomery County Board of Education and the Superintendent of Education of said county as that action is reflected in their report of August 9, 1965, were heard on August 26, 1965.

Upon consideration of said objections and the evidence presented in support thereof and in opposition thereto, this Court finds and concludes that in some respects the objections are well taken and in other respects the objections are to be overruled; specifically, the action of the defendants in denying the requested transfers of Woodrow Austin, Gloria Jean Beamen, Eloise Boswell, Esau Carter, Belinda Joyce Green, George Gregory Green, Jr., Hattie Bell Harper, Horace Nettles, III, Doris Jean Packs, Mary Estella Perry, Minerva Elizabeth Relf, Woodrow C. Sadler, Earnestine Scales, Melvin Scales, Betty Jean Scott, Bill Scott, Sheryl D. Seay, Willis Tolliver, Jr., Lennon Whitlow, Jr., Andrew Russell Whitlow, Major Eugene Whitlow, Walter Jerome Whitlow, Shirley Ann Whitlow, Clemmie Williams, and Jeffrey Williams, did not violate the opinion and decree of this Court of July 31, 1964. The basis for

denying the transfer applications of each of these individuals was not by reason of any policy, practice, custom and usage of maintaining and operating a compulsory biracial school system in Montgomery County, Alabama; the denial of the transfers of these individuals was through the application of acceptable criteria. The action of the Board in denying the transfers to these applicants is, therefore, affirmed. The objections as filed by the plaintiffs and the United States to the rejection of these applicants for transfer are ORDERED to be and each is denied.

As to the applications for transfer of Delores Rosetta Boyd, Janice Eileen Caple, Arlam Carr, Jr., John Harrison McCain, Joan Mastin and Patricia Lee Oliver, this Court finds that the defendants, in processing and refusing to approve the applications of these individuals for transfer and assignment, subjected these Negro students to procedures to which white children desiring to transfer from one school to another in the Montgomery County school system were not subjected. The defendants, in refusing to approve the applications of these students, applied criteria not uniformly applied to all students, but, instead, applied criteria relating solely to Negro students seeking transfer from "Negro" to "white" schools in the Montgomery County school system; the use and application of such criteria denies these Negro students equal protection of the law secured to them under the Fourteenth Amendment to the Constitution of the United States and denies these Negro students of their rights as decreed by this Court on July 31, 1964. It is, therefore, the ORDER, JUDGMENT and DECREE of this Court that the applications for transfer of these students heretofore denied by the defendants, be approved. It is further ORDERED that the objections by the plaintiffs

and the United States to the denial of said applications be and each is sustained.

It is the further ORDER, JUDGMENT and DECREE of this Court (1) that the defense take immediate and necessary steps to advise each of the following that his or her application for transfer has been accepted and (2) that the defendants take the necessary steps toward processing the applications of these students for admission into Sidney Lanier High School:

Delores Rosetta Boyd	John Harrison McCain
Janice Eileen Caple	Joan Mastin
Arlam Carr, Jr.	Patricia Lee Oliver

It is further ORDERED that the defendants take immediate and appropriate action toward advising each of the students, and parents, whose application was approved for transfer by said defendants as said approval is reflected in the report of the defendants in this Court dated August

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9, 1965, and filed in this Court on said date.

From the evidence in this case and from the history of this case as known by the Court, the defendant Board and Superintendent have complied with and are continuing to comply with the applicable law as decreed by this Court on July 31, 1964. The contention on the part of the plaintiffs, the effect of which is that these defendants have acted in bad faith to the point that the Alabama Pupil Placement Law by its application on the part of these defendants should be declared unconstitutional, is not well taken. That

objection and request on the part of the plaintiffs is ORDERED to be and the same is hereby denied.

The action of the defendants as set out in their report to this Court dated August 9, 1965, is in all other respects ORDERED to be and is hereby affirmed.

Done, this the 27th day of August, 1965.

FRANK M. JOHNSON, JR.
United States District Judge

Memorandum Transcript

(Filed September 15, 1965)

TO IDENTIFY PLAINTIFFS' EXHIBITS 4, 5, AND 6 ADMITTED AT HEARING IN MONTGOMERY, ALABAMA, AUGUST 26, 1965, IN ABOVE CASE.

(TO IDENTIFY PLAINTIFFS' EXHIBITS 4 AND 5, FROM REDIRECT EXAMINATION OF WALTER T. MCKEE BY FRED D. GRAY)

* * * * *

Q. I show you, Mr. McKee, a list which has just been handed me by Mr. Guy in response to a subpoena; there is a student who has applied for this year to Lanier.

Mr. Gray: Mark this, please.

The Clerk: Plaintiffs' Exhibit number 4 for identification.

Q. I ask you to look at that preregistration card and tell us the address of that child, as indicated on that application? A. Well, of course, this address on here is 150 South Street.

Q. All right; now, South Street—isn't it a fact that 150 South Street is nearer to Booker Washington than to Lanier? A. I would have to look on the map; I don't know exactly where South Street is.

Q. I show you Plaintiffs' Exhibit 7. A. Now, I would also like to point out that these are temporary registrations here; of course, when that child actually comes to school and fills out a permanent registration card, of course, there may be other factors that might be checked.

Q. Scott—South Street is—Union, McDonough, High, Grove—here is South Street, if you will notice. A. Well, I don't know how far—what—where—which way 150 would be, have to have a City Directory.

Q. It would be approximately near Court Street, it is one block from the other end of it. A. Well, let's see, now; Lanier would be where?

Q. Lanier is down here at Fairview. A. It is right here, isn't it?

Q. And Booker Washington is— A. It might be; I don't know.

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Q. —is right here? A. I would have to measure it; it is not a whole lot of difference there.

Q. It appears to be closer to Booker Washington, doesn't it? A. Well, I couldn't say exactly, but it would depend on—it's—it's within the proximity, I would say.

Q. Let me show you another one, sir; it may be in one exhibit.

The Clerk: Plaintiffs' Exhibit number 5 for identification.

Q. I show you Plaintiffs' Exhibit 5 for identification purposes, which has the name of several prospective students, one living at 1225 Bell Street, 610 Clayton Street, 610 Clayton Street, and 1222 Bell Street, and ask you if you will look at those, and referring to the map in terms of their distance from their residence to Carver and their distance to Lanier, and tell us which school do they live nearest; Bell Street is in this area, Clayton is right in here? A. Well, I would—I would think—

Q. Carver would be— A. Carver is over here on Fairview Avenue area; would think they would live closer to Lanier.

Q. Well, Lanier is on Fairview, too, isn't it? A. No, Lanier is about three blocks; Sears, Roebuck and all that is before you get to Fairview. Here is Lanier, back here, right here off of Marshall.

Q. This is an address— A. Carver is over here.

Q. It is an address on Bell Street, and— A. I would say it would be probably a little closer to Lanier; now, of course, the way—the way you have got to come, you have got to come back over here and cross those railroads to get here, come back.

Q. Coming—coming from Bell Street to Oak Street and straight out Oak Street, you would be to Fairview, you would be to Carver? A. You have got to come on back in that way to get across that bridge, yeah.

Q. Now, let me refer you to, sir, if you will, our old map, which we introduced in evidence sometime ago.

Mr. Robison: Have you offered those as an Exhibit?

Mr. Gray: We offer these in evidence.

The Court: 4 and 5.

Mr. Robison: If the court please, we would like to have those records back; we have no objection to copies being put in. Want our records.

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The Court: It will be admitted; leave granted to withdraw them and substitute copies.

* * * * *

(To identify Plaintiffs' Exhibit 6, from Direct Examination of Meade Guy by Fred D. Gray)

* * * * *

Q. And as Principal of Sidney Lanier High School, have you received any preregistration cards for persons moving into the Montgomery area? A. We made a tentative registration for those who have applied and have been eligible to apply.

Q. Will you tell us how the tentative registration operates, the procedure? A. We have the student and parents come in for a conference. We sit down with them and discuss courses they have had, where they have attended school before, what their choice of courses would be for the coming year, where they live, and these generally would be the things we would discuss.

Q. And have you had such conferences with some people during this summer? A. Yes, we have.

Q. Approximately how many? A. I don't handle all of these; we have some other people there who do; I would say probably two hundred to two hundred fifty.

Q. Now, were all these people that were processed the way you indicated, were they all white students? A. Yes.

Q. I show you, sir, Plaintiffs' Exhibit 6, ask you to look through those and tell us whether or not that is at least a portion of the persons who have preregistered at Lanier for this fall? A. Yes, this would be the majority of them.

Q. And those are your records you brought as a result of the subpoena which was served upon you? A. That is correct.

Q. Now, those persons, the processing of those applications did not go through the Board of Education, did they? A. No, they did not.

Q. And based on your preregistration, will those persons be admitted if they present themselves in September? A. Well, this will depend on a number of things; for one thing,

many of these people did not have records, official transcripts, when they applied to us; for another thing, we do not make a careful check of the area where these people live, as far as their address, it is not—we do not require the parents' signature and testimony from them to the fact that this is correct information; it is a tentative enrollment.

Q. So subject to getting their transcript from other schools, and subject to—and when you say their address, you mean either if they don't—if they don't live in the correct zone, ordinarily, what school would they attend? A. Well, these, of course, come from the areas that are general—that we consider to be our feeder schools, generally.

Q. Uh, huh. A. In other words, if a student applies to us from one of these areas, we ordinarily would accept that person if everything else were in order.

Q. Now, are those records a part of your feeder records, or are those basically people who are moving into the area for the first time? A. These are basically those who are coming into the area for the first time.

Mr. Gray: That's right. We offer these in evidence, Plaintiffs' Exhibit 6.

Mr. Robison: Now, your honor, we have no objection to that, but I again request that they be furnished to us right away, because they are working on them today; we had to get them up this morning, and we would like to withdraw those this afternoon, and with permission to him to copy them any time he wants to at the school.

Mr. Gray: We have no objection, your honor, as long as they are available for the court to see them to make such disposition as needed.

Mr. Robison: That is perfectly all right, but—

The Court: As I understand, you are agreeing that the original Exhibit be withdrawn without copies being made; is that what you are agreeing to?

Mr. Gray: We are agreeing that copies may be substituted; yes, sir.

Mr. Robison: That's right.

The Court: Who is going to make them, two hundred and fifty copies, this afternoon? You all make arrangements about that, too.

Mr. Gray: It is my understanding—

Mr. Robison: Your honor, if we had known what he wanted, we would have tried to make copies, or made them available to him to make copies, but if the school is to function out there, it is necessary that we have them at the earliest possible date that the court will make them available. They were working on them today.

The Court: Is there any specific information in them that the court needs other than—other than what he has already testified to?

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Mr. Gray: Nothing other than the addresses, your honor; it would show particular addresses and—

The Court: You want to read the addresses off after the hearing to the reporter and then let him take them on back without copies being made?

Mr. Robison: We would appreciate it, your honor.

Mr. Gray: Yes, sir.

The Court: Then Plaintiffs' Exhibit 6 will not be admitted in evidence; you can read the addresses to the reporter—

Mr. Gray: Yes, sir.

The Court: —after the hearing.

* * * * * *

GLYNN HENDERSON,
Official Court Reporter.

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PLAINTIFFS' EXHIBIT NUMBER 4, FROM HEARING AT MONTGOMERY, ALABAMA, AUGUST 26, 1965.

(Names and addresses only, as dictated from Exhibit at conclusion of hearing)

Gwendolyn Sanders,
150 South Street.

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PLAINTIFFS' EXHIBIT NUMBER 5, FROM HEARING AT MONTGOMERY, ALABAMA, AUGUST 26, 1965.

(Names and addresses only, as dictated from Exhibit at conclusion of hearing)

Helen Loraine Holmes,
1425 Bell Street.

Rebecca (Becky) Echlund,
610 Clayton.

Elaine Echlund,
610 Clayton.

Jacob E. Barnhill, Jr.,
1222 Bell Street.

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PLAINTIFFS' EXHIBIT NUMBER 6, FROM HEARING AT MONTGOMERY, ALABAMA, AUGUST 26, 1965.

(Names and addresses only, as dictated from Exhibit at conclusion of hearing)

George C. Pittinger,
17 Mildred Street.

Howard Hoylt Ratliff,
502 Holcombe Street.

Mary Ann Holmes,
142 Wade Street.

Michael G. Mills,
3921 Oak Street.

James M. Miller, Jr.,
2229 Carter Hill Road.

Linda Faye Bolton,
321 E. Jeff Davis.

Sarah Edna Brown,
Route 6, Box 243.

Lincoln Daniel Brown,
Route 6, Box 243.

Michael Devlin Make,
1063 Druid Hills.

Altin Goings Stanley,
125-C, Route 6.

Harry Harshman Bruce,
3534 Norman Bridge Road.

James Cary Abernathy,
539 South Perry Street.

Mary Mallory Adams,
1115 South Court Street.

Ronald Trevor Adams, III,
1115 South Court Street.

Ruby Lemerle Adkins,
22 Davis Drive.

Debra (Debbie) Anderson,
3943 Princeton.

Linda Anderson,
3943 Princeton.

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Alice Anne Bacon,
Quarters 4-C, Maxwell Air Force Base.

William Jackson Barton, Jr.,
3444 Warrenton Road.

Robert Beatow,
711 Briarcliff Road.

Robert Joseph Benschine,
2503 Jasmine Road.

Angeline Bivens,
695 Cloverdale Road.

Gwynn Boardman,
100 Pocahontas Road.

Milton Casey Bolt,
Quarters 305, Maxwell Air Force Base.

Alexis L. Braddy,
Quarters 605-B, Maxwell Air Force Base

Shannan Lee Braddy,
Quarters 605-B, Maxwell Air Force Base.

Judith Lynne Braucher,
3567 Berkley.

David Lee Brown,
328 Tanglewood Drive.

Margaret V. Bruenner,
1335 Avalon Lane.

Christine (Chris) Burkett,
2719 Newport Road.

Vincent Arthur Campbell,
121 Shadyside Lane.

Lu Anne Laurine Cardray,
332 Mooreland Road.

Lynn Carter,
3490 Cloverdale Road.

Darrell Carter,
Route 3, Box 260-C.

Jean Carver,
2105 Beverly Drive.

Agatha Grace Catechi,
3320 Montezuma Road.

Mary Catechi,
3320 Montezuma Road.

Ann Grayson Chalker,
2758 Argyle Road.

William Gerald Chalker,
2758 Argyle Road.

Colleen Cordelia Chapman,
2115 College Street.

Leslie Linder Chapman,
1215 College Street.

Nancy Ann Coker,
2537 College Street.

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John Wayne Collett,
3103 Boxwood Drive.

Katherine Cook,
1439 Gilmer Avenue.

Cid Diane Copeland,
520-B Magnolia.

Charlotte Dianne Cottingham,
160 Jones Street.

Carroll Earl Craig,
3248 Braeburn.

Rodney Scott Crum,
2198 Beverly Drive.

Donna Mae Culbertson,
Route 6, Box 196.

Cynthia Ann Daries,
3107 North Colonial Drive.

Carolyn Gay Darnold,
2192 Beverly Drive.

Sharon Lee Denniston,
301 South Anton Drive.

Carol Lee Doti,
3528 Cambridge Road.

Toni Ann Dunagan,
3214 Southmont Drive.

Patricia Dwyer,
34 Spring Valley Road.

Susan Dwyer,
34 Spring Valley Road.

Jeanne Elizabeth Edwards,
2240 Country Club Drive.

Richard Parker Evans,
1415 East Fairview Avenue.

Clyde Preston Evely,
1365 Avalon Lane.

Nancy Carol Farkapa,
3385 Gilmer.

Sophrenia Jean Franklin,
3399 Southmont Drive.

James Alan Fregin,
Quarters 6110, Maxwell Air Force Base.

William Michael Fullilove,
523-C, Maxwell Air Force Base.

Keith Calvin Gatchell,
2191 Beverly Drive.

Gordon Ray Gauthier,
327 Truett Drive.

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Gregory Dean Gauthier,
327 Truett Drive.

Belinda Jane Gehle,
Quarters 605-C, Maxwell Air Force Base.

Suellen Gehle,
Quarters 605-C, Maxwell Air Force Base.

Terri Lynn Gildow,
Route 4, Box 325-B, Seibels Road.

Laurinda Jean Garmorn,
1262 Breckinham Drive.

Barbara Jean Grossman,
3525 Bridlewood Drive.

Nancy Elaine Gwynn,
2733 South Colonial Drive.

Richard Paul Gwynn,
2733 South Colonial Drive.

Lynda Dale Hakala,
Route 4, Box 2220, Woodley Road.

Debbie Hall,
Quarters 536-A, Maxwell Air Force Base.

Marla Hansen,
3449 South Court.

Hans Hardin,
4251 Sunshine Drive.

Harrison Howell Dodge (Hal) Heiberg,
3114 Woodley Road.

Caren Ragnhild Heiberg,
3114 Woodley Road.

John Richard Heninger,
2618 Wildwood Drive.

David Horne,
2711 Fisk Road.

Stephen Horne,
2711 Fisk Road.

Cornelius (Neil) Jackson,
2782 Baldwin Brook Drive.

Karen Elaine Johnson,
27-B, Turner Boulevard, Maxwell Air Force Base.

Mary Mamston Johnson,
3623 Cambridge Road.

Ralph Ray Jones, Jr.,
1119 Buckingham.

W. Roger Joyce,
1743 Croom Drive.

Katherine Leslie Keheley,
1513 South Perry Street.

Mary Katherine Keeler,
3101 North Colonial Drive.

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Karen Rose Kennealy,
Quarters 603-C, Maxwell Air Force Base.

Dale Boyd Kimsey,
1211 South Perry Street.

Melbourne Kimsey, II,
1211 South Perry Street.

J. Bryan Lauson,
3043 North Colonial.

Charles Michael Law,
1101 Westmoreland.

Shari Lea Lane (McEleath),
3547 Southmont Drive.

John Kenneth Lerohl,
3431 Gilmer Court.

Karen Dodd Lerohl,
3431 Gilmer Court.

K. Richard Lindow, Jr.,
Quarters 514-D, Maxwell Air Force Base.

Gary Alan Long,
2638 Fisk Road.

John Terrance (Terry) Lonsdale,
3699 Berkley Drive,

Cheryl Lynn Cardray,
332 Mooreland Road.

Candance McCulluch,
Quarters 609-B, Maxwell Air Force Base.

John Malcolm McInnis, Jr.,
2169 Mona Lisa Drive.

William Arnold McKee,
248 South Boulevard.

Marilyn McKinney,
2711 Argyle Road.

Thomas A. McKinney,
2711 Argyle Road.

Mary Lee MacWilliams,
3474 Gilmer Avenue.

Nancy Ann Macomber,
1122 Barley Drive.

George Mainzer,
1109 South Perry.

David Alan Mann,
702 Lynwood Drive.

Pamela Ann Massey,
4433 Wright Street.

Constance Webber Mayock,
329 Cullen Drive.

Jake Mendel,
3507 Thomas Avenue.

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John A. Merlo,
1113 Goode Street.

Thanas McDowell Mish,
6 Prado.

Lucy Monroe,
2405 College Street.

Rosa Linda Montemayor,
1376 Devonshire Drive.

Jacqueline Jo Morris,
3958 Thomas Avenue.

Ann Murphy,
Quarters 607-C, Maxwell Air Force Base.

Karen Jean Murphy,
651 Wesley Drive.

Bill Anthony Myers,
Quarters 614-C, Maxwell Air Force Base.

Jane Esther Nemetz,
22 E. Fairview Avenue.

Judith Ann Nemetz,
22 E. Fairview Avenue.

Madeline Bransford Nichols,
1429 Gilmer Avenue.

Pauline Marie Ann Nolan,
Quarters 604-A, Maxwell Air Force Base.

Wilda Maria O'Steen,
3449 Wilmington Road.

Mia Oxley,
3106 North Colonial Drive.

Linda Marcelle Parker,
2764 South Colonial.

Jill Ellen Patterson,
Quarters 423, Maxwell Air Force Base.

Hilliard Oyers (Kip) Peavy, III,
142 North Haardt Drive.

Jacqueline Lee Perez,
19 Howard Street.

Cristine Teckla Peterson,
3461 Princeton Road.

Pryor Harris Plumlee, III,
3729 Princeton Drive.

Angela Paulos,
379 Larchmont Drive.

Gaby Marlene Prado,
3620 Kelly Lane.

Avery Lynn Price,
3531 Berkley Drive.

Robert Lyson-Proctor,
3050 Boxwood Avenue.

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Michele Christine Pugh,
3213 North Colonial Drive.

Penny Therese Quinn,
2168 Mona Lisa Drive.

Pamela Ann Ratti,
511-C, Maxwell Air Force Base.

Paul Arthur Ratti,
511-C, Maxwell Air Force Base.

Brenda Joyce Ray,
1 Stuart Street.

Daniel Benge Reid,
100 Spring Valley Road.

Z. O. Riddle, III,
3799 Maclamar Road.

Elizabeth Ann Roberson,
133 South Boulevard.

Kevin Herbert Roche,
1102 Glen Gratton.

Elizabeth Wells Romanek,
3444 Princeton Road.

Michael Anthony Rowan,
4223 Amherst Road.

Jennie Elizabeth Schultes,
43-D, Maxwell Air Force Base.

Edward Durden Sellers,
Apartment 15-D, The Prado.

Robert Jack Shell, II,
3334 Carter Hill.

Susan Ursula Shimonkevitz,
2238 Rosemont Drive.

Randal Eugene Shiver,
2150 Mona Lisa Drive.

Ronald E. Showalter,
Quarters 224, Inner Circle, Maxwell Air Force Base.

Judy Elaine Smith,
3719 Southmont Drive.

Sandra Smith,
3131 Woodley Terrace.

Suzanne Meredith Smith,
3112 Fernway Drive.

Kerry Jean Smothers,
3601 Audubon.

Andrew Lytle Stergiades,
509 Briarcliff Road.

Glen W. Stockton, Jr.,
3121 Partridge.

Joan Burnice Suggs,
Route 1, Box 286.

Katherine Sundstrom,
2657 Burkelaun Drive.

Charles William Sydnoy,
710 East Edgemont Avenue.

Lawrence Joseph Taylor,
Quarters 405, Maxwell Air Force Base.

Gregory James Trammell,
2757 South Colonial.

Rick Cullen Trammell,
2757 South Colonial Drive.

Patricia Underwood,
Quarters 221, Maxwell Air Force Base.

Guy R. Van Sickle,
2650 Fisk Road.

Michele Veiluva,
2718 Argyle Road.

Nancy Ellen Vickery,
1704 South Court Street.

Rodney Waltman,
Route 6, Box 2.

Maura Ward,
2511 College Street.

Jo Ann Watson,
116 Spring Valley Road.

Penelope Anne Wayne,
3513 Audubon Road.

Ronald W. Weaver,
Maxwell Air Force Base.

Diane Carol Wells,
1116 Woodbridge Drive.

John Robert (Bob) Whetstone,
254 South Boulevard.

Glenn Robert Williams,
623 Iris Lane.

Joyce Young,
350 Larchmont Drive.

Belinda Ann Sapponi,
2516 Ashlawn Drive.

Robert Lewis Zeigler,
737-A, Maxwell Air Force Base.

Robert L. Zoerb,
Route 1, Box 327.

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Defendants' Plan for Desegregation

(Filed January 14, 1966)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Now come the Defendants in the above entitled cause, and, as required by the Order of this Court dated May 18, 1965, submit the following complete plan for desegregation:

1. *Assignments*:

All existing school assignments shall continue without change except when transfers or assignments are authorized by the Superintendent of Education of Montgomery County, Alabama under the supervision and review of the Board of Education of Montgomery County, Alabama.

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Pupils entering any grade to which this plan shall have become applicable and pupils otherwise entering the school system for the first time when this plan shall have become applicable to the grade entered, shall be assigned without regard to race as is provided hereinafter.

2. *Transfer and Assignment*:

A. (1) Parents or legal guardians of pupils residing in Montgomery County, Alabama prior to March 31, of each year, in grades to which this plan shall have become applicable wishing school assignment for the pupils to a school

attended only by pupils of a race other than that of the applicant, prior to the entry of the judgment of this Court in this case in July of 1964, shall make application to that end, as hereinafter provided, between March 1 and March 31, of each year, for the next-succeeding school year, beginning with the school year 1966-1967.

(2) After this plan has become applicable to all grades, as hereinafter provided; then, parents or legal guardians of pupils residing in Montgomery County, Alabama, prior to March 31, of each year, wishing school assignment to a school other than that which the pupil is then attending, shall make application to that end, as hereinafter provided, between March 1 and March 31, of each year.

B. (1) Parents or legal guardians of pupils entering the Montgomery County School System for the first time in grades to which this plan shall have become applicable and not having been residents of Montgomery County, Alabama on the preceding March 31, and wishing school assignment for the pupil to attend a school other than a school formerly attended by pupils of their race, prior to the entry of the judgment of this Court in this case in July of 1964, shall make application to that end at the Office of the Superintendent of Education of Montgomery County, Alabama and said application shall be promptly processed

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without regard to race in accordance with the provisions of this plan.

(2) After this plan has become applicable to all grades, as hereinafter provided; then, parents or legal guardians of pupils entering the Montgomery County School System for the first time and not having been residents of Mont-

gomery County, Alabama on the preceding March 31, wishing school assignment, shall make application to that end as hereinafter provided.

3. *Assignment Authority*:

In the assignment or transfer of pupils under this plan in or to specific schools, subject to the supervision and review by the Board of Education of Montgomery County, Alabama, the Superintendent of Education shall be charged with the responsibility for the assignment or transfer of pupils.

4. *Assignment Request*:

A. Until all grades in the Montgomery County School System have been desegregated in accord with the provision of this plan, all applications for assignment to grades reached under this plan must be filed on or before March 31, of each year, on forms obtained from the Office of the Superintendent of Education of Montgomery County, Alabama by the respective parent or legal guardian of the pupils. The proper forms will there be furnished to a parent or legal guardian of pupils on request between March 1 and March 31, of each year. Separate applications must be filed for each pupil for whom an assignment or transfer is requested.

B. After this plan has become applicable to all grades, assignment requests shall be processed as follows:

(1) A parent or legal guardian of pupils desiring to attend a school other than the one the pupil is then attending, except as hereinafter provided in paragraph 4B(3), may obtain forms for transfer or assignment between

March 1 and March 31, of each year, from the principal of

the school to which the assignment is desired and said form must be completed, signed and returned by a parent or legal guardian between March 1 and March 31, of each year, to the principal. Separate applications must be filed for each pupil for whom an assignment is requested.

(2) A parent or legal guardian of pupils entering the Montgomery County School System for the first time and not having been residents of Montgomery County, Alabama on the preceding March 31, wishing assignment as authorized in paragraph 2B(2) above, may obtain application forms from the office of the principal of the school to which assignment is desired and promptly return the completed and signed application to such office. Separate applications must be filed for each pupil for whom an assignment is requested.

(3) A preregistration period shall be held for the first, seventh and tenth grades between March 1 and March 31, of each year. During this period, a parent or legal guardian of a pupil who will enter the first grade shall obtain application forms from the principal of the school to which assignment is desired and shall complete, sign and return the application form to the principal on or before March 31, of each year. During this period, pupils entering the seventh and tenth grades shall obtain application forms from the principal of the school to which assignment is desired and this application form shall be completed and signed by the parent or legal guardian and returned to the principal on or before March 31, of each year. Separate applications must be filed for each pupil for whom registration is sought.

C. All assignment requests shall be processed by the *Assignment Authority* without discrimination on a basis of race or color, using only factors unrelated to race, such as parent and pupil choice, school attendance areas, proximity, availability of transportation, safety in routes and capacity.

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D. *Notice of action taken*:

(1) Notice of the action taken by the *Assignment Authority* on each application filed under this plan will be made on or before June 1 of each year to the parent or legal guardian of each pupil for whom the application was made, until this plan is applicable to all grades.

(2) After this plan has become applicable to all grades only those applicants whose requested assignment is denied will be notified. Such notice shall be given on or before June 1 of each year, or in cases of those entering the system for the first time, prompt notice shall be given, to the parent or legal guardian.

5. *Applicability of Plan*:

This plan shall have application in the school year beginning September, 1966, to the 12th, 11th, 10th, 9th, 8th, 7th, and 2nd, 1st and 3rd grades. This plan's applicability shall be extended through continued school years thereafter to include additional grades as follows:

For the school year beginning September, 1967, the 4th and 5th grades.

For the school year beginning September, 1968, the 6th grade.

Notice of Plan

(1) Until this plan shall have become applicable to all grades in the Montgomery County School System, the Superintendent of Education of Montgomery County shall direct publication in a daily newspaper in the City of Montgomery, Alabama; a notice in accord with the sample notice attached to this plan as "Exhibit A". This publication shall be made twice each week during the last two weeks in February of each successive year.

(2) After this plan has become applicable to all grades in the Montgomery County School System, the Superintendent of Education of Montgomery County shall direct publication as set out in paragraph (1) above in a

daily newspaper in the City of Montgomery, Alabama, the notice which is attached hereto as "Exhibit B".

Respectfully submitted,

HILL, ROBISON AND BELSER
Attorneys for the Defendants

Certificate of Service (omitted in printing).

"EXHIBIT A"

Notice To All Parents Or Guardians Of Pupils In The Montgomery County Public School System

In accordance with an order of the United States District Court for the Middle District of Alabama, the Montgomery County Board of Education will desegregate grades one, two and three of the elementary schools, grades seven, eight and nine of the junior high schools, and grades ten, eleven and twelve of the senior high schools for the school year commencing in September 1966, and for other years as applicable.

As the parents or guardians of pupils who will attend these grades in September 1966, you may submit an application to the Office of the Superintendent of Education of Montgomery County for your child to attend a school that was formerly attended only by members of another race. You may obtain the applications for assignment and transfer at the Office of the Superintendent of Education of Montgomery County between March 1 and March 31, 1966, on Monday through Friday, from 8:30 a.m. to 5:00 p.m. You must complete, sign and return the application to the Office of the Superintendent of Education on or before March 31, 1966. It is not necessary for more than one parent to pick up, sign or return the application.

All applications filed within the time and in the manner as stated above will be processed and acted on without discrimination as to the race of the applicants. You will be notified on or before June 1, 1966, whether your application has been accepted or rejected.

The Montgomery County Public School System is presently divided into elementary, junior high and high school

attendance areas. If you do not already know what school attendance area you reside in, you may obtain this information by either calling by telephone or going in person to the Office of the Superintendent of Education for the Montgomery County School System.

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"EXHIBIT B"

Notice To All Parents Or Guardians Of Pupils In The Montgomery County Public School System

In accordance with the orders of the United States District Court for the Middle District of Alabama, all grades in the Montgomery County School System have been desegregated.

As the parents or legal guardian of pupils who will attend schools of the Montgomery County School System during the next school year commencing in September, you may submit application for your child to attend any school in this system. If you desire for your child to attend a school other than the one the child is now attending, you may obtain an application from the principal of the school to which attendance is desired between March 1 and March 31. You must complete, sign and return the application to such principal on or before March 31. It is not necessary for more than one parent to pick up, sign or return the application.

A preregistration period shall be held for the first, seventh, and tenth grades between March 1 and March 31, of each year. During this period a parent or legal guardian of a pupil who will enter the first grade shall obtain application forms from the principal of the school to which

assignment is desired, and shall complete, sign and return the application form to the principal on or before March 31, of each year. During this period, pupils entering the seventh and tenth grades shall obtain application forms from the principal of the school to which assignment is desired and this application form shall be completed and signed by the parent or legal guardian and returned to the principal on or before March 31, of each year. Separate applications must be filed for each pupil for whom registration is sought.

All applications filed within the time and in the manner as stated above will be processed and acted upon without discrimination as to the race of the applicant. You will be notified on or before June 1 in the event your application

has been rejected.

The Montgomery County Public School System is presently divided into elementary, junior high and high school attendance areas. If you do not already know what school attendance area you reside in, you may obtain this information by either calling by telephone or going in person to the Office of the Superintendent of Education for the Montgomery County School System.

Order as to Filing Objections

(Filed January 19, 1966)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

As directed by this Court in its order made and entered herein on May 18, 1965, the defendants have filed with this Court as of January 14, 1966, their detailed plan for the operation of the Montgomery County public school system commencing with the 1966-1967 school year.

The objections, if any, to the plan as filed by said defendants on January 14, 1966, are ORDERED to be filed with this Court on or before February 18, 1966.

Done, this the 19th day of January, 1966.

FRANK M. JOHNSON, JR.
United States District Judge

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Objections of Amicus Curiae to Proposed Plan of Desegregation

(Filed February 18, 1966)

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

The United States of America, as Amicus Curiae, objects to the proposed plan of desegregation of the Montgomery County School System submitted by the Defendants on January 14, 1966, for the following reasons:

1. The Defendants have failed to carry their burden of establishing the existence of administrative difficulties to justify any delay in desegregating all grades.

2. The proposed plan fails to provide for the desegregation of all grades by September 1967.

3. The plan fails to eliminate the effects of past racial assignments in grades purported to be desegregated.

4. The plan fails to provide for allowing individual Negroes, as an absolute right, to transfer to schools from which they were excluded because of their race.

5. The plan fails to provide for non-racial assignment of students who newly move to Montgomery County or who move from one attendance area to another.

6. The plan fails to provide for individual notice to parents of the rights and procedures available under the plan.

7. The plan fails to provide for Negroes enrolled in schools attended by white students to have full use and participation in all activities, facilities, and programs, including school bus transportation, without any distinction based upon race or color.

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8. The plan fails to provide for the elimination of race as a factor in the hiring, placing, and retention of teachers and for the desegregation of faculty in all grades covered by the plan.

BEN HARDEMAN
United States Attorney

JOHN M. ROSENBERG
Attorney

MASON C. LEWIS
Attorney

CERTIFICATE OF SERVICE (omitted in printing)

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Order as to Hearing on Objections

(Filed February 18, 1966)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

For the purpose of hearing the objections filed herein on this date to the proposed plans of desegregation as submitted by the defendants in each of the above-captioned cases, it is ORDERED that the above-captioned cases be and they are hereby consolidated for said purpose.

It is further ORDERED that the objections be heard in the United States District Courtroom, Montgomery, Alabama, commencing at 9 a.m., Friday, March 11, 1966.

Done, this the 18th day of February, 1966.

FRANK M. JOHNSON, JR.
United States District Judge

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Plaintiffs' Objections to Defendants' Plan of School Desegregation

(Filed February 18, 1966)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Come now the Plaintiffs in the above-styled cause, by and through their attorneys of record, and object to the Defendants' plan to desegregate the public schools of Montgomery County, Alabama; said Plan was filed in this Court on or about the 14th day of January, 1966, and as grounds for said objection assign the following:

1. The Defendants' entire plan is discriminatory and is based on race in that, "all existing school assignments shall continue without change except when transfer or assignment is authorized by the superintendent of education of Montgomery County, Alabama;" that the initial assignment of these pupils, prior to the Order of this Court on July 31, 1964, was based on race; any plan which continues such existing assignments is in violation of said Order.

2. The Plan fails to provide for the initial assignments of students on a nonracial basis. The Defendants propose to initially assign all students in grades on the basis of

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race for the 1966-67 school year. It is only after the initial assignments of students on the basis of race that students,

in grades being desegregated for the 1966-67 school year, who wish to attend school with students of another race can then apply for transfer. Defendants' proposal to initially assign students on the basis of race and then to permit transfers under certain conditions is clearly unconstitutional.

Plaintiffs submit that defendants should be required to initially assign all students in grades being desegregated without regard to dual school zones or dual attendance areas based on race, or in the alternative, to grant complete freedom of choice to all students to be affected by the plan for the school year 1966-67 without regards to dual school zones or attendance areas. See *Singleton* v. *Jackson Municipal Separate School District,* No. 22527 (5th Cir., January 26, 1966).

3. The Plan fails to provide for desegregation of all twelve (12) grades by September, 1966. Under Defendants' proposed plan complete desegregation of all twelve (12) grades will not be effective until the beginning of the 1968-69 school year. This delay in desegregation has not been justified by a showing by the defendant of administrative difficulties. *Brown* v. *Board of Education,* 349 U.S. 294 (1955); *Goss* v. *Board of Education of the City of Knoxville, Tennessee,* 373 U.S. 683 (1963). At this stage, even alleged administrative problems are closely scrutinized. See *Bradley* v. *School Board of the City of Richmond, Virginia,* and *Gilliam* v. *School Board of the City of Hopewell, Virginia,* 15 L.ed.2d 187 (Nov. 1965); *Rogers* v. *Paul,* 15 L.ed.2d 265 (Dec. 1965).

Plaintiffs submit defendants should plan for complete desegregation of all twelve (12) grades by September,

1966. See *Singleton* v. *Jackson Municipal Separate School District,* No. 22527 (5th Cir., January 26, 1966); *Price* v. *Denison Independent School District Board of Education,* 348 F.2d 110 (5th Cir. 1965). The defendants have failed to justify the delay until the 1968-69 school year required by the proposed plan.

4. The Plan fails to provide the right to transfer for students in grades not covered by the Plan for the 1966-67 school year. Students in grades not reached by defendants' plan for the 1966-67 school year, have an absolute right to transfer to schools from which they have been excluded because of race. "Administrative problems may justify and orderly transitional period during which the system may be desegregated several grades at a time. But the existence of this transitionary period cannot justify the denial of any individual student's constitutional right to freedom from discrimination. The school children in still-segregated grades in Negro schools are there by assignment based on their race. This assignment was unconstitutional. They have an absolute right, as individuals, to transfer to schools from which they were excluded because of their race." *Singleton* v. *Jackson Municipal Separate School District, supra,* at p. 9.

5. The Plan fails to provide for the desegregation and non-discriminatory hiring, placing and retention of faculty and administrative personnel. The Defendants' proposal does not provide for the elimination of race as basis in employment, assignment or retention of teachers or administrators. Plaintiffs regard it as essential that defendants' Plan for desegregation of any public school system

provide an adequate start toward the elimination of race

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as a basis for employment, retention and assignment of teachers, administrators and other staff personnel. See *Bradley* v. *School Board of the City of Richmond, Virginia,* and *Gilliam* v. *School Board of the City of Hopewell, Virginia,* 15 L.ed.2d 187 (Nov. 1965); *Rogers* v. *Paul,* 15 L.ed.2d 265 (Dec. 1965). The Fifth Circuit Court of Appeals has interpreted these decisions to require a prompt and meaningful start toward teacher desegregation.

6. Defendants' desegregation Plan provides only for the consideration of transfer requests made at the instance of the student. The Plan does not provide for removing those factors from the school system which tend to encourage, promote and perpetuate segregation, e.g., "feeder" schools which operate on a racial basis, segregated teaching, professional and administrative staff, segregated special programs [e.g., classes for the handicapped or gifted, adult, vocational or commercial education or kindergarten programs]. In short, defendants' desegregation Plan is not designed to eliminate segregation from the Montgomery public school system.

7. The defendants' plan does not attempt nor can it effectuate desegregation of the public schools of Montgomery County, Alabama.

8. The Plan makes no provisions, providing bus transportation on a reorganized non-racial basis.

9. The Plan does not provide for the elimination of school zone lines based on race, as this Court found those

lines to exist on Page three (3) of the Memorandum Opinion.

10. The Plan provides no procedure for the elimination of the "feeder system," which had been set up and which this Court found to be operating on a racial basis.

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11. The Plan does not provide for the defendants to perform "its clear legal duty of taking affirmative steps to provide and operate a desegregated educational system in Montgomery County, Alabama," on the contrary, the Plan places the burden of desegregating the public school system of Montgomery County, Alabama, on Negro pupils and their parents and does not provide for initiation of desegregation by the defendants, and as such this conflicts with the Opinion and Judgment of this Court and is in conflict with the decision of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit.

12. The Plan fails to abolish the continued use of racial factors in the planning of the extra-curricular activities, construction of schools, planning of school budgets and the disbursement of school funds.

12. (a) The Plan fails to set ascertainable standards for the consideration of the applications for assignment or application of pupils to a particular school.

12. (b) It fails to provide for the assignment of pupils on a non-racial basis.

12. (c) The Plan fails to abolish the present dual scheme of school attendance area lines.

12. (d) It affirmatively appears that this Plan has the purpose and effect of providing token desegregation of schools and the school system and does not meet the minimum requirement and Laws of the land with respect to desegregating public schools.

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13. Section two (Transferring Assignment) of the Defendants' Desegregation plan Establishes dual procedures and apparently dual time limits for pupils desiring "school assignment to a school attended only by pupils of a race other than that of the applicant prior to the entering of the judgment of the Court in this case, in July of 1964." In effect, this provision establishes one procedure to be used by pupils desiring to attend an integrated school and another procedure for pupils desiring to attend a colored school. Therefore, this plan is based on race and is unconstitutional.

14. That portion of the plan which requires the parents or legal Guardians of pupils who desired to attend an integrated school to personally obtain and personally return to the office of the Superintendent of Education the application for transfer is designed to discourage Negro parents to send their children to formally white school. No such requirement is necessary for white children to transfer to other white schools and no such requirement is necessary for Negro children to transfer to other Negro schools.

15. Said Plan fails to give a pupil who is of sufficient age and grade an opportunity to exercise his choice of the school which he would desire to attend.

16. The entire plan of the defendants is unconstitutional in that it makes no provision compelling each pupil in the Montgomery County School System to exercise his choice of a school. The plan only comes into operation when a pupil desires to attend a school attended by pupils other than members of his race. Each pupil in the school system should be compelled to exercise his choice of the school which he desires to attend. Therefore, the defendants should supply to each pupil in the school system a form upon which he must indicate his choice of the school which he desires to attend. Under no circumstances should the defendants reassign pupils to the school which the initial assignment was based on race.

17. In addition to the notice set out in the plan, the parents should receive a copy of said notice along with the report card of each pupil in the school system and a copy of said notice should be placed on the bulletin board

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of each school in the system.

18. The plan fails to provide for desegregation of any new constructions and any and all consolidations of schools.

19. The defendants' plan fails to specifically indicate that the dual or biracial school attendance system will be abolished with the application of the plan to the respective grades when, and as, reached by it. *Stell* v. *Savannah-Chatham County Board of Education,* supra; *Lockett* v. *Board of Education of Muscogee County, Georgia,* 352 F.2d 225 (5th Cir. 1965) and *Bush* v. *Orleans Parish School Board,* 308 F.2d 491 (5th Cir. 1962). While students entering desegregated grades are offered a choice of schools,

the plan fails to indicate how students failing to exercise such choice will be assigned. See *Singleton* v. *Jackson Municipal Separate School District*, supra; *Kemp* v. *Beasley*, No. 18050 (8th Cir., October 7, 1965).

WHEREFORE, plaintiffs pray that the Court will promptly set a hearing on plaintiffs' objections to the plan and that upon such hearing the Court will grant the relief prayed for above. Plaintiffs further pray that this Court will retain jurisdiction of this cause for the purpose of granting such further relief as may be required by further developments.

Respectfully submitted,

GRAY & SEAY
JACK GREENBERG
CHARLES H. JONES, JR.
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE (omitted in printing)

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Remarks of Hon. Frank M. Johnson, Jr. at Conclusion of Hearing of March 11, 1966

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

(The above styled case coming on for hearing at Montgomery, Alabama, March 11, 1966, before Hon. Frank M. Johnson, Jr., Judge, a hearing was had, at the conclusion of which the following remarks were made by the Court:)

The Court: All right, gentlemen, the Court will approve in part and disapprove in part the proposed plan that has been objected to and been under scrutiny.

As to the grades and schedule for desegregation, the Board proposes to add to the Freedom of Choice grades grades three and eight. The Court approves that, except they should add grade four, also; that is commencing September, '66. And then in September, '67, I approve of what you propose, except we will add grade six, and that will make all of the grades, effective September, '67. That means, then, that you propose, and with the addition of grade four, three, four, and eight, September, '66, and grades five and six September, '67. That will get all of them, won't it?

Mr. Robison: Yes, sir.

The Court: All right. The Court feels as if you should follow your H.E.W. regulations as far as notice is concerned. You should send out choice forms and applications, also, by the children to the parents. Let the choice forms

choice period be from April 1 to April 30, with the choice forms and notice to each of the parents going out not later than April 1. Follow the forms that have been set out here in the H.E.W. regulations; they seem to cover it fairly adequately.

All right. As to consolidating and closing some of the schools, the Court feels that a number of these small, inade-

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quate schools that were established and have been operated to perpetuate the dual system based on race should be closed. I realize what the administrative and financial problems are in a school system the size of Montgomery, so I will not require all of them to be closed September, '66, but you should get started on that and close some of them; I am going to leave it up to you lawyers to figure out which ones you are going to close by September, '66; but approximately one third of them should be closed effective September, '66—certainly Abraham's Vineyard down here right next door to Harrison, that should be closed; that is the reason it is taking a lot of money to operate the school system, when you operate things like that. Consider Big Zion to be closed and consolidated into Pintlala, and Lillian Dungee, consolidation into Catoma, maybe Tankersley to Pintlala, and I am going to leave that up to you lawyers representing the Board—and I am going to ask the Government to represent the Court on this as Amicus and figure out which schools of this list of twenty-one of them, as set out on one of these Exhibits here, the evidence reflects that they are small rural schools, colored schools, that Mr. McKee named in his testimony, which of the ones that can be closed with the least amount of administrative and financial difficulty.

The order that is going to be drawn—and the Amicus, after you do this conferring, will draw this order to be presented to me not less than next Friday or the last of next week—should eliminate any pressure that might be upon the Board to channel their finances into making additions to larger Negro schools to absorb the closing and consolidation of these small rural Negro schools. I don't want that to happen; that can't be tolerated. As I understand, the Board already proposes to eliminate through closing and consolidation all of these schools, but the order should have some definite dates on it, and should designate the schools definitely; and the reason I am leaving it up to you all is that so you can determine which of the schools are to be closed September, '66, and which of them will remain not longer than September, '67. All of them should be closed by September, '67. That is Abraham's Vineyard, Alice White,

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Arthur Cook, Big Zion, Cecil, Chappell Gray, G. W. Trenholm, Katie Bowen, Lillian Dabney, Lillian Dungee, McLean, McLemore, Phillips, Tankersley, Waugh, Zion Hill, Arrington, Woodley, Battle, McCants, and Mount Zion Road. Of course, those students from those schools that are being consolidated and closed should, as the Board proposes, have Freedom of Choice, as new students coming into the system; I understand that is what the Board does propose as far as that point is concerned.

All facilities, programs, and services that are made available should be made available on a desegregated basis, and to that extent the Court—and the Board makes the statement to the Court in brief that they are available already on a desegregated basis—so that part of it will be approved.

The Court will order—and you lawyers work it out, if you can, so as to help the Board in its administrative prob-

lems—will order the Board to take the necessary affirmative steps to eliminate the past discriminatory assignments in the staff and teachers to eliminate race as a factor in hiring and placing and retention of faculty and staff members. You can, if you will, agree upon the schools where that is to be effective in September, '66, and I will not expect too much of it in September, '66, because of the timing. I accept Mr. McKee's testimony that the bulk of that is done up until now; but I will expect a considerable amount of it, in line with the Singleton case, effective September, '67. And there should be no more separate meetings of faculty and staff as far as the school system is concerned; that should be eliminated now. There is no administrative problem in doing that; it occurs to me that the separate meetings incur additional administrative and expense problems.

The dual transportation system should be eliminated completely by September, '66. Order the geographical attendance areas abolished, and we will be through with the transition period by September, '67. That will end it completely. And order the abolition of the geographical attendance areas not later than September, '67. I see no reason why they should not be allowed to use them until

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then, as long as their use doesn't involve discrimination based upon color.

As I stated, your choice period is from April 1 to April 30. Report to the Court on the assignment and the disposition of applications of students by May 15. Report to the Court on or before June 15 as to the progress that you have made on your faculty desegregation.

I believe that covers it all. I might announce that the lawyers have agreed, and the Court approved their agreement, there is being formalized at this time an Order to be entered in connection with the Bullock County schools, and that Order is along the same lines as I have just ordered in the Montgomery case. And the order in the Montgomery case that I want drawn envisions approximately the same Order that was entered in the Macon County case, with the changes and exceptions that I have indicated. And also the one that the lawyers agreed to in the Lowndes County case. I understand that a school system as large as Montgomery, as opposed to the size of the school system in these rural counties, needs some additional time for transition, and the comments I have just made take that into consideration. All right, recess Court until further order.

* * * * *

GLYNN HENDERSON
Official Court Reporter

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Order to Execute Plan for Desegregation

(Filed March 22, 1966)

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

In accordance with the conclusions reached by this Court in this matter and the evidence presented in this matter upon which those conclusions are based, it is hereby,

ORDERED, ADJUDGED, and DECREED that the defendants, their agents, officers, employees, and successors, and all those in active concert or participation with them shall:

1. Execute the Plan for Desegregation of the Montgomery County, Alabama Public School System which is attached hereto and incorporated herein.

2. Report to the Court, on or before June 7, and each such date until further Order of this Court, the anticipated student enrollment in each school by race and grade for the next school year and report, as it occurs, any subsequent substantial change in enrollment affecting desegregation.

3. Report to the Court by June 15, and each such date, until further Order of this Court, the planned assignments of professional staff to each school for the next school year by race and grade, or where appropriate, by subject taught or position held, and report, as it occurs, any sub-

sequent change in planned staff assignment affecting staff desegregation.

4. Report as soon as possible after the opening of school, but no later than September 20, and each such date until

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further Order of this Court, the actual data for the items covered in the reports ordered in Paragraphs 2 and 3.

5. The Court specifically retains jurisdiction of the parties and the cause.

DONE THIS 22nd day of March, 1966.

FRANK M. JOHNSON, JR.
United States District Judge

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PLAN FOR DESEGREGATION OF THE PUBLIC SCHOOL SYSTEM OF MONTGOMERY COUNTY, ALABAMA

I.

Grades Covered

All grades of the Montgomery County Public School System shall be desegregated by the Fall of 1967.

(a) 1966: Commencing with the school term in September 1966, grades 1, 2, 3, 4, 7, 8, 9, 10, 11, and 12 of the Montgomery County Public School System shall be desegregated and pupils assigned, without regard to race or color, on a freedom of choice basis as described in this Plan.

(b) 1967: Commencing with the school term in September 1967, the remaining grades, specifically grades 5 and 6, of the Montgomery County Public School System shall be desegregated and pupils assigned, without regard to race or color, on a freedom of choice basis as described in this Plan.

II.

Nondiscriminatory Operation of Newly Constructed Schools and Newly Expanded Schools

Any school to be newly constructed and any school to be substantially expanded by the construction of additional classrooms will be planned, opened, expanded, and operated on a nonsegregated basis. Freedom of choice will cover all grades, and teachers and principals will be as-

signed so that the faculty is not composed of members of one race.

III.

Operation of the Freedom of Choice Plan

The following requirements shall apply for all students covered by freedom of choice under this Plan.

(a) *Who May Exercise Choice*: A choice of schools may be exercised by a parent or other adult person serving as the student's parent. A student may exercise his own choice if he (1) is exercising a choice for the ninth or a higher grade, or (2) has reached the age of fifteen at the time of

the exercise of choice. Such a choice by a student is controlling unless a different choice is exercised for him by his parent or other adult person serving as his parent during the choice period or at such later time as the student exercises a choice. Each reference in this Plan to a student exercising a choice means the exercise of the choice, as appropriate, by a parent or such other adult, or by the student himself.

(b) *Annual Exercise of Choice*: Each student, both white and Negro, is required to exercise a free choice of schools annually.

(c) *Choice Period*: The period for exercising choice will commence on April 1, and end on April 30, preceding the school year for which choice is to be exercised. No student or prospective student, who exercises his choice with the choice period, shall be given any preference because of the time within the period when such choice was exercised.

(d) *Mandatory Exercise of Choice*: A failure to exercise a choice within the choice period does not preclude any student from exercising a choice at any time before he commences school for the year with respect to which the choice applies, but such choice may be subordinated to the choices of students who exercised choice before the expiration of the choice period. Any student who has not exercised his choice of school within a week after school opens will be assigned to the school nearest his home where space is available, under standards for determining available space which will be applied uniformly throughout the system.

(e) *Distribution of Explanatory Notice and Choice Form*: On the first school day of the choice period, an explanatory notice and a choice form (Appendices A and B) will be sent home with each child in the Montgomery County Public School System. Extra copies of the explanatory notice and the choice form will be freely available to parents, students, prospective students, and the general public at each school in the system and at the office of the Superintendent.

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(f) *Return of Choice Form*: At the option of the person completing the choice form, the choice form may be returned by mail, in person, or by messenger to the office of the Superintendent.

(g) *Choices not on Official Form*: The exercise of choice may also be made by the submission in like manner of any other writing which contains information sufficient to identify the student and indicates that he has made a choice of school.

(h) *Choice Forms Binding*: Once a choice form has been submitted, it is binding for the entire school year and may not be changed except in cases of parents making different choices than their children under the conditions set forth in Paragraph III (a) of this Plan and in cases where compelling hardship is shown by the student.

(i) *Preferences in Assignment*: In assigning students to schools, no preference will be given to any student for prior attendance at a school, and no choice will be denied for any reason other than overcrowding. The Montgomery County Board of Education shall report to the Court each instance of a preference given for prior attendance at a school because of special circumstances. If, as a result of such preference, a student residing closer to the school than the special student is denied his choice, a report of the disposition of the denied student, and reasons therefor, shall be made to the Court. In case of overcrowding at any school, preference will be given on the basis of the proximity of the school to the homes of students choosing it, without regard to race or color. In determining proximity for the 1966-1967 school year, existing district lines may be employed without regard to race. All existing attendance areas as defined by district lines and feeder school descriptions will be abolished effective 1967.

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(j) *Second Choice Where First Choice is Denied*: Any student whose choice is denied must be notified in writing by May 30, and give his choice of each school in the system serving his grade level where space is available.

(k) *Transfers for Special Needs*: Each student must attend the school to which he is assigned under the foregoing provisions, except that any student who requires a

course of study not offered at that school, or who is physically handicapped, may be permitted, upon his written application, to transfer to another school which is, designed to fit, or offers courses for his special needs.

(l) *Transportation*: Busses will be routed to the maximum extent feasible so as to serve each student choosing any school in the system. In any event, every student choosing the school nearest his residence will be transported to the school to which he is assigned, whether or not it is his first choice, if that school is sufficiently distant from his home to make him eligible for transportation.

(m) *Official Not to Influence Choice*: No official, teacher, or employee of the school system shall require or request any student to submit a choice form during the choice period other than by the explanatory notice and the choice form. After the expiration of the choice period, the school system will make all reasonable efforts to obtain a completed choice form from each student who has not exercised a choice. However, at no time shall any official, teacher, or employee of the school system influence any parent, or other adult person serving as a parent, or any student, in the exercise of a choice, or favor or penalize any person because of a choice made. Information concerning individual choices made or schools to which individual students are assigned will not be made public.

(n) *Public Notice*: On, or shortly before, the date the choice period opens, a notice describing the desegregation plan will be published in the Montgomery daily newspapers.

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Copies of this notice will be distributed at about the same time to all other news media in Montgomery.

IV.

Services, Facilities, Activities, and Programs

A student shall have full access to all services, facilities, activities, and programs (including transportation, athletics, and other extra curricular activities) that may be conducted or sponsored by, or affiliated with the schools of the system. A student attending school for the first time on a desegregated basis may not be subject to any disqualification or waiting period for participation in activities and programs, including athletics, which might otherwise apply because he is a transfer student.

V.

New Students

Each new student will be required to exercise a free choice of schools before enrollment. Each such student will be furnished a copy of the prescribed notice and choice form, by mail or in person, on the date the choice period opens or as soon thereafter as the school system learns that he plans to enroll. Each will be given an opportunity to exercise his choice during the choice period. A prospective student exercising his choice after the choice period will be given at least one week to do so.

VI.

Non-covered Grades

Students entering the fifth or sixth grade in September, 1966 will not be covered by this freedom of choice plan. However, any such student shall have the right to apply for transfer to and be enrolled in any school from which he was excluded, in the past, on account of his race.

VII.

Faculty and Staff

Race or color will henceforth not be a factor in the hiring, assignment, reassignment, promotion, demotion, or dis-

missal of teachers and other professional staff, with the exception that assignments shall be made in order to eliminate the effects of past discrimination. Teachers, principals, and staff members will be assigned to schools so that the faculty and staff is not composed of members of one race.

In the recruitment and employment of teachers and other professional personnel, all applicants or other prospective employees will be informed that Montgomery County operates a racially integrated school system and that members of its staff are subject to assignment in the best interest of the system and without regard to the race or color of the particular employee.

The Superintendent of Schools and his staff will take affirmative steps to solicit and encourage teachers presently employed to accept transfers to schools in which the majority of the faculty members are of a race different from that of the teacher to be transferred.

Teachers and other professional staff will not be dismissed, demoted, or passed over for retention, promotion, or rehiring on the ground of race or color. In any instance, where one or more teachers or other professional staff members are to be displaced as a result of desegregation or school closings, they shall be transferred to any position in the system where there is a vacancy for which they are qualified.

VIII.

Closing of Inadequate Facilities

Prior to the commencement of the 1966-67 school year, the Abraham's Vineyard, Phillips, Cecil, Arthur Cook, Battle, McCant's, and Katie Bowen Elementary Schools will be discontinued as educational facilities.

Prior to the commencement of the 1967-68 school year, the following schools will be discontinued as educational facilities:

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Alice White	Lillian Dungee
Arrington	Waugh
Big Zion	Woodley
Tankersely	Zion Hill
Chappell Gray	McLean
G. W. Trenholm	McLemore
Lillian Dabney	Mt. Zion Road

The Montgomery County Board will design and provide remedial educational programs to eliminate the effects of past discrimination, particularly, the results of the unequal and inferior educational opportunities which have been offered in the past to Negro students in the Montgomery County School System.

Students displaced as a result of the closing of the above listed schools will be assigned to schools, without regard to race or color, on a freedom of choice basis as described in this plan, whether or not their grade is covered.

Expansion of existing school plants to accommodate displaced students will be designed to eliminate the dual school system.

APPENDIX A

Notice

Grades 1, 2, 3, 4, 7, 8, 9, 10, 11, and 12 will be operated on a desegregated basis next year. Any student in these grades may choose to attend any school in the Montgomery County School System regardless of the school's former racial designation. A choice must be made for each child who will be in grades 1, 2, 3, 4, 7, 8, 9, 10, 11, and 12 in September, 1966.

Attached to this Notice is a choice form which must be filled out on or before April 30, 1966. If a child is entering the ninth or higher grade, or if the child is fifteen years old or older, he may make the choice himself. Otherwise, a parent or other adult serving as a parent must sign the choice form.

No child will be denied his choice except for reasons of overcrowding. If a child's choice is denied for overcrowding, a second choice will be made available. If no choice can be granted, because of overcrowding, children nearest the school will be given preference.

All facilities, activities, and programs at the school chosen will be available to all students.

Transportation will be provided, if possible, no matter what school is chosen.

Choice forms may be returned by mail, in person, or by messenger to the Superintendent's Office at 305 South Lawrence Street, Montgomery, Alabama.

APPENDIX B

(Elementary) (Junior High School) (High School)

CHOICE FORM

This form is provided for you to choose a school for your child to attend next year. You have 30 days to make your choice. It does not matter which school the child attended last year, and it does not matter whether the school was formerly a white or a Negro school. The form must be mailed or brought to the office of the Superintendent, 305 South Lawrence Street, Montgomery, Alabama, by April 30, 1966. A choice is required for each child. Unless you are notified to the contrary by May 30th, your choice is approved.

Name of child .....
(Last) (First) (Middle)

Address .....

Name of Parent or other
adult serving as parent .....

If child is entering first grade, date of birth:

.....
(Month) (Day) (Year)

Grade pupil is entering .....

School Attending During
1965-66 School Year .....

Choose one of the following schools by marking an X beside the name:

Name of School	Grades	Location
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

Signature .....

Date .....

To be filled in by Superintendent:

School Assigned: .....

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Order Amending Order of March 22, 1966

(Filed August 18, 1966)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

The order of this Court made and entered herein on March 22, 1966, recited that race or color will henceforth not be a factor in hiring or assigning teachers and other professional staff. The effect of this order was to require the Montgomery County Board of Education to commence the process of desegregating the faculty and professional staff commencing with the school year 1966-67.

This Court judicially notes the action taken by the United States Court of Appeals for the Fifth Circuit on August 16, 1966, in the Mobile school case of *Birdie Mae Davis, et al.* v. *Board of School Commissioners of Mobile County, Alabama, et al.*, —— F. 2d ——, wherein, as to the desegregation of the faculty and staff in the Mobile school system, the Mobile County Board of Education has been allowed until the school year 1967-68 to end its policy of hiring and assigning teachers and staff according to race. Uniformity, as well as fairness, requires this Court upon its own motion, therefore, to amend its order of March 22, 1966, to the extent that the Montgomery County School Board of Education be allowed until the school year 1967-68 to end its present policy of hiring and assigning teachers and other school personnel according to race.

It is, therefore, the ORDER, JUDGMENT and DECREE of this Court that the order of this Court made and entered herein on March 22, 1966, be and the same is hereby amended to the extent that the Montgomery County Board of Education—286— be, and said Board is, hereby allowed until the school year 1967-68 to commence desegregation of the faculty and professional staff in the Montgomery County school system.

It is further ORDERED that the Montgomery County Board of Education report to this Court by June 15, 1967, the planned assignment of the faculty and professional staff to each school for the 1967-68 school year by race and grade.

Done, this the 18th day of August, 1966.

FRANK M. JOHNSON, JR.
Chief Judge

Petition of Plaintiffs for Admission of Willie Robert Bell

(Filed September 12, 1966)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Now come the Plaintiffs, by and through their attorneys of record, and show unto this honorable court as follows:

1. That in accordance with the Order of this court made on March 22, 1966, Willie Robert Bell, a Negro student who during the 1965-66 school year was enrolled in Carver High School, Montgomery, Alabama, and that pursuant to the said Order referred to above, the said Willie Robert Bell did within the time provided by said Order, file with the defendant Board of Education his choice of school as Lanier High School in Montgomery, Alabama.

2. That on or about June 3, 1966, he received a letter from Lanier High School requesting he and his parents to come register at said school between June 9th and 10th from 12 to 3 p.m. That said Willie Robert Bell and his mother did on or about the 9th day of June, 1966, go to said school and register.

3. That on or about August 18, 1966, said Willie Robert Bell received a letter indicating that he was to report at said school for a band meeting on August 27, 1966. That said Willie Robert Bell did appear and did attend said band meeting.

4. That on or about September 1, 1966, the mother of said Willie Robert Bell received a phone call from the principal of Lanier High School and was instructed to bring

said student to the school on September 2, 1966.

5. That on said date, the said Willie Robert Bell and his mother appeared at said school and were informed by the principal that he could not be enrolled in said school because he had a record in juvenile court, but advised him that he may enroll in the school which he attended the previous year.

6. By the defendant failing and refusing to admit said student to the school of his choice is in violation of the Order of this Court enter on March 22, 1966.

7. That on September 6, 1966, the said Willie Robert Bell was enrolled in Carver High School and remained enrolled in said school until Thursday, September 8, 1966, at which time he was informed by the school officials that he was expelled and could not attend any school.

8. That said expulsion of said student without a hearing and an opportunity to be heard is in violation of due process of law as provided by the Fourteenth Amendment to the United States Constitution.

THE PREMISES CONSIDERED, Plaintiff prays that this Court set a date for hearing of this Petition and upon a hearing thereof, this Court will enter an order directing the defendants to admit Willie Robert Bell as a student at Lanier High School. Plaintiff further prays for such further and different relief to which he is entitled.

GRAY & SEAY

Certificate of Service (omitted in printing)

Order Setting Hearing on Plaintiffs' Petition

(Filed September 13, 1966)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Plaintiffs' motion seeking an order of this Court directing the defendants to admit Willie Robert Bell as a student to Sidney Lanier High School is hereby Ordered to be and the same is set for a hearing to commence Wednesday, September 14, 1966, at 2 p.m., in the United States District Courtroom, Montgomery, Alabama.

Done, this the 13th day of September, 1966.

FRANK M. JOHNSON, JR.
Chief Judge

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Answer to Petition of Plaintiffs

(Filed September 14, 1966)

IN THE
UNITED STATES DISTRICT COURT,
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

No. 2072-N

ARLAN CARR, JR., etc., et al.,

Plaintiffs,

vs.

MONTGOMERY COUNTY BOARD OF EDUCATION, etc., et al.,

Defendants.

Now come the defendants in the above entitled cause and for answer to the petition heretofore filed in this cause on the 12th day of September, 1966, by the attorneys of record for the plaintiffs in the above entitled cause, say as follows:

1. That they admit the allegations and averments contained in paragraph 1 of said petition.

2. That they admit the allegations and averments contained in paragraph 2 of said petition.

3. That they admit the allegations and averments contained in paragraph 3 of said petition.

4. That they admit the allegations and averments contained in paragraph 4 of said petition.

5. That they deny each and every allegation and averment contained in paragraph 5 of said petition and for further answer to said paragraph 5 say that the said Willie Robert Bell and his mother did appear at Sidney Lanier High School on September 2, 1966, at which time they were informed by H. H. Adair, Principal of Sidney Lanier High School, that because of the record of the said Willie Robert Bell which had been brought to his attention, by the administrative officers of the Board of Education of Montgomery County, Alabama, Willie Robert Bell could not be admitted at this time to Sidney Lanier High School; that Mr. Adair hoped that when he "got straightened out" he would be able to attend and finish high school. That the actions of the defendants, their agents and employees were not influenced by race, color or creed.

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6. That they deny the allegations and averments contained in paragraph 6 of said petition.

7. The defendants deny each and every allegation of paragraph 7 and for further answer to said paragraph 7 say that on September 6, 1966, the said Willie Robert Bell filed a choice form at Carver Senior High School in Montgomery, Alabama, and that on the afternoon of September 7, a faculty member of Carver Senior High School did assist Willie Robert Bell in the filling out of a program card. That on September 8, W. P. Thompson, Principal of Carver Senior High School informed Willie Robert Bell that he could not enroll at Carver Senior High School at

the present time as the said W. P. Thompson had been notified by administrative personnel of the Montgomery County School system that because of the record of Willie Robert Bell which had been called to their attention, Willie Robert Bell should not be admitted to any high school in this system. That the action taken by the defendants, their agents and employees, was not based on race, color or creed.

8. That for answer to paragraph 8 of said petition, the defendants say that the said Willie Robert Bell was not entitled to an administrative hearing; that none was requested, that the action taken is not a violation of the due process of law as provided for in the Fourteenth Amendment of the Constitution of the United States; that the action was an administrative matter and taken for the purpose of maintaining order and discipline in the public school system of Montgomery County; for the preservation of said system.

For further answer to the petition as a whole, the defendants say that the action complained of by the said plaintiffs and Willie Robert Bell is the long-standing policy of the administrative officers and employees of the public school system of Montgomery County; that said action is no more than the exercise of the discretionary authority invested in school authorities with respect to any applicant or pupil in the system, regardless of race, color or creed; that said action is not in violation of or any attempt to

circumvent the Order of this Court entered March 27, 1966. And in further support of the answer of the defendants, there is attached hereto and made a part hereof the affidavit of Denny Abbott, Chief Probation Officer of the Domestic Relations Division of the Circuit Court of Montgomery

County, Alabama, as Exhibit A; the affidavit of Walter T. McKee, Superintendent of Education of Montgomery County and William Silas Garrett, Assistant Superintendent of Education of Montgomery County, as Exhibit B; the affidavit of H. H. Adair, Principal of Sidney Lanier High School of Montgomery County, Alabama, as Exhibit C; and the affidavit of W. P. Thompson, Principal of Carver Senior High School of Montgomery County, Alabama, as Exhibit D.

Now having answered said petition and each and every paragraph thereof, your defendants pray that they be discharged with the reasonable costs in their behalf expended.

HILL, ROBISON AND BELSER

Certificate of Service (omitted in printing)

EXHIBIT "A"

STATE OF ALABAMA :

:

COUNTY OF MONTGOMERY :

Before me, the undersigned authority, personally appeared Denny Abbot, who is known to me and who, being by me first duly sworn, on oath doth depose and say as follows:

I graduated from Huntingdon College in Montgomery, Alabama, in 1961, with a BA Degree Major in Sociology. I have completed all of my work for a Masters of Science Degree in Criminology and Corrections, with the exception of the submission of my thesis. This work was done at Florida State University. I have attended two sessions of Delinquency Control Institutes at Florida State University and have had five years of experience in the Family Court of Montgomery County, Alabama, serving as Chief Probation Officer of this Court for the past three years.

I have official and personal knowledge of Willie Robert Bell's record as a juvenile in the Family Court Division of the Circuit Court of Montgomery County, Alabama. Willie Robert Bell was first before this Court on September 1, 1963, at which time he was 13 years of age and was charged with using a car without the owner's consent, no driver's license, and reckless driving. The car belonged to Willie Robert Bell's father and the no driver's license and reckless driving offense arose out of a chase by motorcycle patrolman Bland of the City of Montgomery chasing Willie Robert Bell. After conference with Willie Robert Bell's

father, the charge of using the car without the owner's consent was dropped and the no driver's license and reckless driving charges remained. My records do not indicate final disposition of the charges of no driver's license and reckless driving.

Willie Robert Bell next appeared before this Court on March 19, 1965, at which time he was charged with failure to obey a police officer. Willie Robert Bell was ordered to leave an area and he refused to do so. At this time, there were demonstrations going on in the City of Montgomery. On April 9, 1965, Willie Robert Bell was brought before this Court on the charge of failure to obey a police officer

at which time the Judge lectured Willie Robert Bell and released him.

Willie Robert Bell next appeared before this Court on a charge of larceny on March 8, 1966. This charge of larceny was for the shoplifting of seven decks of playing cards from Bama Department Store on the Southern Bypass. This case was heard on March 24, 1966, at which time Willie Robert Bell was adjudged a delinquent and given six months in the County Jail with a suspended sentence and he was placed on probation.

On April 14, 1966, Willie Robert Bell was charged with disorderly conduct when he was arrested by Patrolmen Gandy and Swearengin of the City Police Department of the City of Montgomery. At this time he cursed the officers and refused to get into the police car and Officer Causey of the Youth Bureau of the City of Montgomery was called. This incident occurred after ten o'clock at night. On April 21, 1966, this charge of disorderly conduct was before the Court and continued to April 28, 1966, at which time Willie Robert Bell's probation was revoked and

he was confined to the detention area for juveniles with his case to be reviewed in one month. On April 26, 1966, his case was reviewed and he was released with his probation to continue.

On August 5, 1966, Willie Robert Bell was arrested in a raid which occurred at 11:20 P.M., on the home of O'Garie Tillman at Mt. Meigs, Alabama, which raid was participated in by the undersigned and Vernon Backer, a Probation Officer of the Juvenile Division of the Family Court Division of the Circuit Court of Montgomery County, Alabama, representatives of the Sheriff's Office of Montgomery County, Alabama, and State Troopers. This raid occurred at 11:20 p.m., Tillman and four other male adults, along with Willie Robert Bell, were observed dancing, petting with one another and drinking and at the time of the raid the adults were charged with contributing to the delinquency of a minor and Willie Robert Bell was charged with violation of his probation. These cases were heard by the Court on August 18, 1966, at which time the charge

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of contributing to the delinquency of a minor against the five adult males was continued for six months for further consideration; Willie Robert Bell was lectured and permitted to continue on probation.

WITNESS my hand, this 14th day of September, 1966.

DENNY ABBOTT

Sworn to September 14, 1966.

EXHIBIT "B"

STATE OF ALABAMA
COUNTY OF MONTGOMERY

Before me the undersigned authority personally appeared William Silas Garrett who is known to me and who being by me first duly sworn on oath doth depose and say as follows:

I am Associate Superintendent of Education of the Montgomery County Board of Education and have been Associate Superintendent for the past 16 years. I have been in the Montgomery County Public School System for 28 years.

On or about August 29, 1966, I was advised by Mr. Walter T. McKee, Superintendent of Education of the Montgomery County Board of Education, that he had received a report on the record of Willie Robert Bell and that he had notified Mr. H. H. Adair of the record, and that Willie Robert Bell could not be admitted at this time to Sidney Lanier High School or any other high school in the system. He informed me of this record and instructed me to notify the other high schools in the system that due to the record of Willie Robert Bell he was not eligible for admission.

On or about September 2, I received a telephone call from a person representing herself to be Mrs. Bell, advising me that her son Willie Robert Bell had been refused admission to Sidney Lanier High School. I told her that I was aware of the circumstances and that her son could not be admitted to any high school in this system at this time.

On or about September 7, I notified Mr. W. E. Thompson, Principal of Carver High School, and other senior high school principals that because of the record of Willie Robert Bell and in line with the long standing policy of admissions Willie Robert Bell was not eligible for admission to any high school in this system.

The action taken by Mr. McKee and I with regard to the refusal of admission of Willie Robert Bell was not based or influenced in any way by race, color, or creed. When records or disciplinary problems are brought to our attention which we feel justify suspension or expulsion, we take the appropriate and necessary action. Expulsion and suspension powers are also within the sound discretion of the school principals.

It is not the policy of the admission officers of the Board of Education or the principals of the schools of the Board of Education, Montgomery County, to search or cause to be searched the record of individual students; however, when a problem is brought to our attention by an official of the County, an employee of the Board of Education, or an interested citizen of the County, we feel it is our duty to investigate and if necessary make recommendations.

Given under my hand this 14th day of September, 1966.

WILLIAM SILAS GARRETT

Sworn to September 14, 1966.

STATE OF ALABAMA
COUNTY OF MONTGOMERY

The undersigned Walter T. McKee, Superintendent of the Montgomery County Board of Education, has read the above and foregoing affidavit and the information and facts stated therein are true and correct.

Witness my hand this 14th day of September, 1966:

WALTER T. McKEE

Sworn to September 14, 1966.

EXHIBIT "C"

STATE OF ALABAMA
COUNTY OF MONTGOMERY

Before me the undersigned authority personally appeared H. H. Adair who is known to me and who being by me first duly sworn on oath doth depose and say as follows:

I am principal of Sidney Lanier High School, and prior to becoming principal I served as assistant principal of Sidney Lanier High School for a period of six years. I have been in the Public School System of Montgomery County for more than twelve years.

On or about August 29, I received a call from Mr. Walter McKee, Superintendent of Education of the Montgomery County School System. He advised me that the record of Willie Robert Bell had been called to his attention and he gave me this record. Mr. McKee called to my attention the long standing policy of the administration that under the circumstances of the record of Willie Robert Bell being known and being what it was he should not be admitted to any school in this system. On September 1, I contacted the mother of Willie Robert Bell and advised her to come with her son to Sidney Lanier on the morning of September 2. She appeared with Willie Robert Bell and I advised her in the presence of Mr. Lance D. Grissett, Assistant Principal of Sidney Lanier, of the record which had been brought to my attention and that under the circumstances Willie Robert Bell could not be ad-

mitted to school. At this time I stated to her that I hoped when he "got straightened out" that he would be able to attend and finish high school. At this time she left with her son.

The action taken by me was not influenced in any way by race, color, or creed, as I would have taken similar action on any applicant for admission to Sidney Lanier under the circumstances in considering a similar record of any student.

The brother of Willie Robert Bell is presently attending Sidney Lanier High School and at the time I talked with Willie Robert Bell's mother she asked me if Willie's brother would be affected. I advised her that it would not. I had received a copy of a report of the Police Department of the City of Montgomery concerning Willie Robert Bell's brother, a copy of which report is attached to this affidavit; however, I did not consider this sufficient grounds to refuse admittance.

Witness my hand this 14th day of September, 1966.

H. H. ADAIR

Sworn to September 14, 1966.

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SUPPLEMENTARY OFFENSE REPORT

POLICE DEPARTMENT
MONTGOMERY, ALABAMA

Time
8:10 P.M.

Montgomery Police Dept. Color ( ) Sex ( )
Complainant Date Aug. 9, 1966

Address Offense as Reported
Fighting & Cussing

Res. Phone After Investigation Changed To
Fighting & Cussing

Bus. Phone

Complaint:

At 10:30 a.m. this date, Officer Swearengin arrested the two above boys for fighting and cussing at the above country club. There were several women and children present at the time this incident happened.

Investigation:

After Jessie Williams and Richard Bell were picked up for the above offenses, they were released and told to report to the Y. A. Div. with their mother today at 3:00 p.m. Jessie Williams and Jessie Bell Jr. are one and the same.

After Jessie Bell Jr. N/M age 17, and Richard Bell, N/M age 15, 628 Kimball St. tel. 263-5279 had been brought to this office by their mother, Althea Bell; we talked to them about the above offenses. Jessie told us that it all started when they carried a sack of ice into the club. Jessie

said that he told his brother Richard to make out a ticket on the ice. Jessie said that when he told Richard this, Richard said "hell make one out your self, you got a pencil in your pocket". Jessie said that this is when he went over to Richard and hit him with a fifty pound-paper bag. Jessie said this is when they started tussling. Jessie said that this is when he hit Richard in the mouth with his right fist, cutting Richard's bottom lip. We observed the small cut on Richard's bottom lip at the time that we talked to him in the Y. A. Office.

We also talked to Richard Bell about the above offenses, and he told us that everything his brother had told us was true, and that he (Richard) was involved in the above offenses.

Disposition:

Jessie Bell Jr. was charged to the Y. A. Div. and Richard Bell was counseled, warned, and released to his parents. Jessie was also released to his parents. This case is cleared by arrest.

This Offense Is Declared: Unfounded Cleared by Arrest

Exceptionally Cleared Inactive (Not Cleared)

Signed H. L. Gilmore & Leola Davis
Investigating Officers

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EXHIBIT "D"

STATE OF ALABAMA
COUNTY OF MONTGOMERY

Before me the undersigned authority personally appeared W. E. Thompson, who is known to me and who being by me first duly sworn on oath, doth depose and say as follows:

I am the principal of Carver Senior High School and have been principal of this school for the past 10 years. I served as assistant principal for 6 years, and have been in the Montgomery County Public School System for 18 years.

On September 7, 1966, I received a call from Mr. Silas Garrett, Associate Superintendent of Education of the Montgomery County Public School System, advising me that if Willie Robert Bell attempted to enroll in Carver he could not do so because of his record which has been called to the attention of Mr. McKee.

Registration was heavy on September 6th and 7th. I checked after receiving the call from Mr. Garrett and found that Willie Robert Bell had made out a choice form on September 6 but that a program card had not been made out for him. On September 8, I found out that a program card had been made for Willie Robert Bell around 2 o'clock in the afternoon on September 7 by one of my faculty members. I called Willie Robert Bell to the office on September 8 and advised him that I had received instructions that he could not enroll at Carver High School at the present time.

Witness my hand this 14th day of September, 1966:

W. E. THOMPSON

(Sworn to September 14, 1966)

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Order on Petition of Plaintiffs

(Filed September 14, 1966)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Upon consideration of the motion of the plaintiffs seeking an order of this Court enjoining the defendants from refusing to admit and permit Willie Robert Bell to attend as a student at Sidney Lanier High School, the Court notes that the plaintiffs' petition filed herein on September 12, 1966, complains that Bell's expulsion was without a hearing and, for that reason, was in violation of due process. *Dixon* v. *Alabama State Board of Education,* 294 F. 2d 150 (5th Cir. 1961). Upon consideration of that aspect of plaintiffs' petition and the assurance on the part of defendants' counsel that a hearing, within a reasonable time, will be afforded Willie Robert Bell, it is considered appropriate to continue this matter until further order of this Court.

It is, therefore, the Order, Judgment and Decree of this Court that this cause be and the same is hereby continued until further order of this Court.

Done, this the 14th day of September, 1966.

FRANK M. JOHNSON, JR.
Chief Judge

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Plaintiffs' Motion to Dismiss Petition

(Filed October 3, 1966)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Come now Plaintiffs, by and through their attorneys of record, and move the Court to dismiss the Petition of Willie Robert Bell heretofore filed herein and as grounds for said motion set out and assign the following:

1. That the attorneys for Plaintiffs, after careful consideration of the matters and things set out in the Petition here and above referred to, and after consultation with all the parties involved, have concluded that it is in the best interest of Petitioner Willie Robert Bell and Plaintiffs that this Petition be dismissed.

2. That the attorneys for the defendants and the attorneys for the Plaintiffs have agreed to a dismissal subject to the approval of the Court.

WHEREFORE Plaintiffs pray that the Petition filed on behalf of Willie Robert Bell be dismissed.

GRAY & SEAY
Attorneys for Plaintiffs

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Certificate of Service (omitted in printing)

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Order to Dismiss Petition

(Filed October 5, 1966)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Upon the motion of the plaintiffs, and without any objection by the defendants, the petition of Willie Robert Bell filed herein on September 12, 1966, is ORDERED to be and the same is hereby dismissed.

Done, this the 5th day of October, 1966.

FRANK M. JOHNSON, JR.
Chief Judge

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Plaintiffs' Motion for Further Relief

(Filed April 11, 1967)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

1. In *United States and Linda Stout, et al.*, v. *Jefferson County Board of Education, et al.*, Fifth Circuit, No. 23345, 12/29/66 (adopted with modifications by the court, sitting en banc, 3/29/67), the United States Court of Appeals for the Fifth Circuit decided seven school desegregation cases from districts in Alabama and Louisiana, which control this cause. The court held, *inter alia*, that district courts in this circuit must enter the decree appended to the *Jefferson* opinion:

> We expect the provisions of the decree to be applied in proceedings involving . . . earlier court-approved plans which fall short of the terms of the decree. On motion by proper parties to reopen these cases, we expect these plans to be modified to conform with our decree. (Slip opinion, p. 113)

2. The desegregation plan in this case fails to fulfill the requirements set forth in the *Jefferson* decree. Plaintiffs are entitled, at a minimum, to the entry of the *Jefferson* decree. This relief must be granted immediately if relief is to be effective for the 1967-68 school year.

Particularly, plaintiffs request a 30 day registration period commencing May 1, 1967 for the 1967-68 school

year, or as soon thereafter as is practicable, notwithstanding any registration period which may have been completed.

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WHEREFORE, plaintiffs pray that after consideration of the above motion at the earliest possible date, this court enter the decree proposed by the United States Court of Appeals in its decision in *United States* v. *Jefferson County Board of Education, supra,* as the desegregation plan in the present case.

Respectfully submitted,

GRAY and SEAY
JACK GREENBERG
CHARLES H. JONES
HENRY M. ARONSON
Attorneys for plaintiffs

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Certificate of Service (omitted in printing)